

PROJECT NO. 18 U-2555-01  
CCLIP (SP) RESURFACING PROJECT  
CMS CONTRACT NO. \_\_\_\_\_  
CITY OF ARKANSAS CITY, KANSAS

## AGREEMENT

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Arkansas City, Kansas** (“City”), collectively, the “Parties.”

### RECITALS:

- A. The City has applied for and the Secretary has approved a CCLIP (SP) Resurfacing Project.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.
- C. The City desires to construct a street resurfacing Project on US-166, a City Connecting Link for the State Highway System, in the City.
- D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of state and local funds.

**NOW THEREFORE**, the Parties agree as follows:

## ARTICLE I

### DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following 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. **“CCLIP (SP) Resurfacing Program”** means a City Connecting Link Improvement Program (CCLIP (SP)) that is a part of the KDOT Local Partnership Program with cities and counties. The state’s participation in the cost of construction and construction engineering will be one hundred percent (100%) for cities with a population between 0 to 2,499, ninety-five percent (95%) for cities with a population between 2,500 to 4,999, ninety percent (90%) for cities with a population between 5,000 to 24,999, eighty-five percent (85%) for cities with a population between 25,000 to 49,999, eighty percent (80%) for cities with a population between 50,000 to 99,999, and seventy-five percent (75%) for cities with a population equal to or greater than 100,000, up to a maximum of \$400,000.00 per fiscal year of state funds. The CCLIP (SP) Resurfacing Program is for contract maintenance only.

3. **“City”** means the City of Arkansas City, Kansas, with its place of business at 118 W Central Avenue, Arkansas City, KS 67005.

4. **“City Connecting Link”** means a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city’s limits and is designated as part of the national system of Interstate and defense highways.

5. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving, or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.

6. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

7. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.

8. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.

9. **“Design Plans”** mean 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.

10. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.

11. **“Eligible / Participating Bid Items”** means all bid items that pertain to Project resurfacing and striping along the connecting link only. Items eligible for CCLIP (SP) funding include manhole adjustments, milling, overlays, aggregate or paved shoulders (if already existing), concrete pavement, thin bonded concrete overlays, joint repair, slurry seals, bituminous seals, ultra-thin bonded overlay, concrete and asphalt pavement patching, subgrade improvement, reconstruction, traffic control, transporting of salvageable material (millings), striping, traffic signal loops on the state highway and that portion of the traffic signal loops that lie inside the return on side streets, and pavement marking on the connecting link. Video-detection systems are participating, except on side streets; however, such systems will require pre-approval, as well as additional details, and a bill of materials to be included in the final design plans. Resurfacing work is participating out to the curb returns on side streets.

12. **“Encroachment”** means any building, structure, vehicle, parking area, or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.

13. **“Fiscal Year (FY)”** means the state’s fiscal year which begins July 1 and ends on June 30 of the following calendar year.
14. **“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.
15. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
16. **“Non-Eligible / Non-Participating Bid Items”** means items typically non-eligible for CCLIP (SP) funding including but not limited to: bridge deck patching, utility adjustments, curb and gutter, overlay of curb and gutter, adjustment or reestablishment of survey markers, drainage appurtenances, driveways, entrances, sidewalks, sidewalk ramps, construction warranties, traffic loop construction outside the return on a side street, video detection on side streets, and construction outside of the curb and gutter. Work performed outside the Project limits on side streets, or outside the city limits is non-eligible for state participation, items with unit price changes from the let price (other than items with price adjustment specification in the bid documents) and any other items deemed non-eligible by the Secretary.
17. **“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.
18. **“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.
19. **“Project”** means Project No. 18 U-2555-01, consisting of milling and overlay, pavement patching, pavement markings, and any other pre-approved resurfacing methods for the CCLIP (SP) Resurfacing Program, on US-166, from Arkansas River Bridge to 8<sup>th</sup> Street, in Arkansas City, Kansas.
20. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
23. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and the Secretary’s successors and assigns.
24. **“Surface Preservation” or “SP”** means a fund category, previously known as KLINK, intended to address deficiencies in or extend the life of the driving surface. Project scopes may consist

of overlay, mill and overlay, pavement patching, joint repair, seals, or similar surface maintenance work. Parking lanes may be included.

25. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, including fire and police signal systems which directly or indirectly serve the public.

## ARTICLE II

### FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Participating Costs of Construction include all Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change. The City agrees to notify the Bureau of Local Projects if costs increase more than 10% over the estimate.

Party	Responsibility
Secretary	90% of Participating Costs of Construction and Construction Engineering (CE), not to exceed \$400,000.00.
City	10% of Participating Costs of Construction and CE until Secretary’s funding limit is reached  100% of Participating Costs of Construction and CE after Secretary’s funding limit is reached  100% of Costs of Preliminary Engineering (PE), Right of Way, and Utility Adjustments  100% of Non-Participating Costs

## ARTICLE III

### SECRETARY RESPONSIBILITIES:

1. **Reimbursement Payments.** The Secretary will make such payment to the City as soon as reasonably possible after construction of the Project is completed, after receipt of proper billing, and attestation by a licensed professional engineer employed or retained by the City that the Project was constructed within substantial compliance of the final Design Plans and specifications.

## ARTICLE IV

### CITY RESPONSIBILITIES:

1. **Limited Scope.** The Project is limited to roadway resurfacing within the Project Limits. The Project roadway resurfacing may include all Eligible items as defined above. Roadway resurfacing does not include such Non-Eligible items as defined above and any other items deemed Non-Eligible or Non-Participating by the Secretary. The City will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with Public Right-of-Way Accessibility Guidelines (PROWAG), regardless of whether such improvements are deemed Non-Eligible/Non-Participating bid items by the Secretary for reimbursement purposes.
2. **Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current CCLIP (SP) Resurfacing Program for this Project.
3. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the City will 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 employees, agents, 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.
4. **Indemnification by Contractors.** The City will require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act of omission of the Contractor, the Contractor's agent, subcontractors, or suppliers. If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.
5. **Design and Specifications.** The City shall be responsible to make or contract to have made Design Plans for the Project in conformity with the current version of Section 13.0 CCLIP of the LPA Project Development Manual.
6. **Letting and Administration by City.** The City shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Secretary. The City further agrees to administer the Construction of the Project in accordance with the Design Plans, and the current version of the City's currently approved procedures, if applicable, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.
7. **Performance Bond.** The City will require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

8. **Responsibility for Adequacy of Design.** The City, and any Consultant retained by the City, shall have sole responsibility for the adequacy and accuracy of the Design Plans, specifications, and estimates. Any review of these items that may be performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the City's and its Consultant's duty to provide adequate and accurate Design Plans, specifications, and estimates. Such reviews are not done for the benefit of the Consultant, the Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation, or expressed or implied warranty, to any person or entity concerning the adequacy or accuracy of the Design Plans, specifications, and estimates or any other work performed by the Consultant or the City.

9. **Design Schedule and Submission to Secretary.** The City will follow a schedule for design and development of plans that will allow the Project to be Let to contract in the programmed fiscal year; otherwise, the Secretary has the right to withdraw the Secretary's participation in the Project. If the City's Project preliminary plans, specifications, and a cost estimate (PS&E) are submitted to KDOT's Bureau of Local Projects later than May 1 of the programmed fiscal year, at the Secretary's discretion, the Project may be moved into a future fiscal year.

10. **Movement of Utilities.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipelines, meters, and other Utilities, publicly or privately owned, which may be necessary for Construction of the Project in accordance with the final Design Plans. The expense of the removal or adjustment of the Utilities and Encroachments located on public right of way or easement shall be borne by the owner or the City.

11. **Future Encroachments.** The City will prohibit future erection, installation, or construction of encroachments either on or above the Right of Way, and it will not in the future permit the erection of fuel dispensing pumps upon the Right of Way of the City Connecting Link. The City will require any fuel dispensing pumps erected, moved, or installed along the City Connecting Link be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

12. **Legal Authority.** By his or her signature on this Agreement, the signatory certifies that he or she has legal and actual authority as representative and agent for the City to enter into this Agreement on its behalf. The City agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

13. **Temporary Traffic Control.** The City shall provide a temporary traffic control plan within the design plans, which includes the City's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The City's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and in compliance with PROWAG, and FHWA rules, regulations, and guidance pertaining to the same.

14. **Permanent Traffic Control.** The City must ensure the location, form, and character of informational, regulatory, and warning signs, of traffic signals and of curb and pavement or other

markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, shall conform to the latest version of the MUTCD as adopted by the Secretary.

15. **Access Control.** The City will maintain control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

16. **Final Design Plans.** The final Design Plans will depict the Project Limits. The Eligible/Participating bid items must be shown separated and listed apart from the Non-Eligible/Non-Participating bid items on the final Design Plans, bid documents, and on the detailed billing provided by the City. The City shall have the final Design Plans signed and sealed by a licensed professional engineer. The City will furnish to KDOT's Bureau of Local Projects an electronic set of final Design Plans and specifications. 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.*

17. **Program Administration.** In addition to complying with all requirements contained in Section 13.0 CCLIP of the LPA Project Development Manual:

(a) The City acknowledges that funding for the Project may be cancelled if the City proceeds to advertise, Let, or award a contract for the Project, prior to receipt of notification from KDOT's Bureau of Local Projects of its completion of the final review of the plans, specifications, and estimates (PS&E).

(b) The City acknowledges that funding for the Project may be cancelled if the City awards the contract for the Project prior to its receipt of an "Authority to Award" notification from KDOT's Bureau of Local Projects.

(c) The City will provide to KDOT's Bureau of Local Projects an electronic copy of the executed contract, the completed tax exemption form (PR-76 or PR-74a) and the City's Notice of Award.

(d) After the contract for the Project is awarded, the City will promptly notify both the Project Manager of KDOT's Bureau of Local Projects and the KDOT Area Engineer to communicate the date the contractor is anticipated to begin work on the Project.

(e) The City acknowledges that any costs for work completed prior to receipt of a Notice of Actual Start Date from the KDOT Area Engineer are ineligible for participation in the Program, will be deemed non-participating costs, and shall be the responsibility of the City.

18. **Discrimination Laws.** The City will: (a) 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 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) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A.

§ 44-1031 and K.S.A. § 44-1116; and (d) include those provisions set forth in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such Contractor, subcontractor or vendor. If the City fails to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the City has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated, or suspended in whole or in part.

19. **Inspections.** The City will provide the Construction Engineering/inspection necessary to determine substantial compliance with the final Design Plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or Consultant to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the City executes an agreement for inspection, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

20. **Corrective Work.** Representatives of the Secretary may make periodic inspection of the Project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of the funding participation in the CCLIP (SP) Resurfacing Program. The Secretary does not undertake (for the benefit of the City, the Contractor, the Consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the Contractor's errors, omissions, or deviations from the final Design Plans and specifications.

21. **Attestation.** Upon completion of the Project the City shall have a licensed professional engineer employed or retained by the City attest in an email to the KDOT Area Engineer and the Project Manager for KDOT's Bureau of Local Projects, that the Project was completed in substantial compliance with the final Design Plans and specifications.

22. **Final Acceptance.** Prior to issuing final payment to the Contractor, the City must obtain final acceptance of the Project from the KDOT Area Engineer.

23. **Accounting.** Upon request by the Secretary, the City will provide the Secretary an accounting of all actual Non-Participating costs which are paid directly by the City to any party outside of KDOT and costs incurred by the City not to be reimbursed by KDOT for Preliminary Engineering, Utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

24. **Reimbursement Request.** The City will request payment from the Secretary after the City has paid the Contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in substantial compliance with the final Design Plans and specifications.

25. **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits

reveal payments have been made with state funds by the City for items considered Non-Participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

## ARTICLE V

### GENERAL PROVISIONS:

1. **City Connecting Link Maintenance Agreement.** The Parties executed a City Connecting Link Maintenance Agreement regarding portions of US-166 existing within the Arkansas City city limits which is still valid and in effect as of the Effective Date. Nothing in this Agreement modifies or invalidates the terms of the City Connecting Link Maintenance Agreement.

2. **Existing Right of Way.** The Project will be constructed within the limits of the existing right of way.

3. **Incorporation of Final Plans.** The final Design Plans and specifications are by this reference made a part of this Agreement.

4. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

5. **Project Modification.** Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be Let
- b. Project length
- c. Project location
- d. Project scope

**Items b, c, and d require an attached map to scale.**

It is further mutually agreed during Construction, the City shall notify the Secretary of any changes in the plans and specifications.

6. **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.

7. **Contractual Provisions.** The Provisions found in the current version of the **Contractual Provisions Attachment (Form DA-146a)**, which is attached, are incorporated into and made a part of this Agreement.

8. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

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

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. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.

12. **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.

13. **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.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be signed by their duly authorized officers.

ATTEST:

CITY OF ARKANSAS CITY, KANSAS

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
MAYOR

(SEAL)

KANSAS DEPARTMENT OF TRANSPORTATION  
SECRETARY OF TRANSPORTATION

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

Approved as to form:

**INDEX OF ATTACHMENTS**

Civil Rights Attachment  
Contractual Provisions Attachment (Form DA-146a)

**KANSAS DEPARTMENT OF TRANSPORTATION  
CIVIL RIGHTS ACT 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**

The term “Contractor” is understood to include the Contractor, the Contractor’s assignees and successors in interest, consultants, and all other 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, agrees as follows:

1. **Compliance with Regulations:** The Contractor will comply with the Acts and the Regulations relative to nondiscrimination 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 nondiscrimination 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, FTA, or 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 nondiscrimination 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 (1) through six (6) 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 agrees to comply with the following nondiscrimination 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, (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. §§12131-12189as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38);
- The Federal Aviation Administration’s nondiscrimination 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, (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 (prohibits you from discriminating because of sex in education programs or activities), (20 U.S.C. § 1681).

### 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.