

Construction CMS Contract No. _____

PROJECT NO. 18 U-2563-01
KANSAS LOCAL BRIDGE IMPROVEMENT PROGRAM
BRIDGE RECONSTRUCTION/REHABILITATION
CITY OF ARKANSAS CITY, KANSAS

PROJECT 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 Kansas Legislature, through K.S.A. § 68-2314c, authorized the Secretary to provide funding for programs to assist local units of government in the administration of transportation projects to aid local public authorities in replacing or repairing bridges throughout the state. The Kansas Local Bridge Improvement Program (KLBIP) has been authorized by the Governor of the State of Kansas and the Kansas Secretary of Transportation under this legislation.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of bridges in the State of Kansas.
- C. The City has requested, and the Secretary has authorized, a project under the KLBIP, as further described in this Agreement.
- D. Cities and counties may be eligible to receive state assistance in the financing of the construction and reconstruction of bridges, roads, and state highways provided the work is required to be done in accordance with the laws of Kansas and any applicable federal requirements.

NOW THEREFORE, the Parties agree to the following terms and provisions:

ARTICLE I

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

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the city of Arkansas City, Kansas, with its place of business at 118 W Central Ave., Arkansas City, KS 67005.

3. **“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.
4. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **“Consultant”** means any engineering firm or other entity retained to perform consulting or design services for the Project.
7. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
8. **“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.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“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.
11. **“Hazardous Waste”** means includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261, *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280, *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. § 65-3430, *et seq.*, Hazardous Waste.
12. **“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.

13. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
14. **“MUTCD”** means the latest version of the Manual on Uniform Traffic Control Devices as adopted by the Secretary.
15. **“NBI”** means the National Bridge Inventory, under the jurisdiction of the U.S. Department of Transportation, Federal Highway Administration.
16. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.
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. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
19. **“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.
20. **“Project”** means all phases and aspects of the KLBIP project to be undertaken by the City, being: **Replacement of Bridge No. 501100180000004 on F St., located just N of Tyler Ave. in Arkansas City, Kansas, over Mill Canal in Cowley County, Kansas**, and is the subject of this Agreement.
21. **“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.
22. **“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.
23. **“Right of Way”** means the real property and interests therein necessary for the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
24. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and the Secretary’s successors and assigns.
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, and other similar commodities,

including non-transportation fire and police communication 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 Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

Party	Responsibility
Secretary	85% of Participating Costs of Construction and Construction Engineering (CE), not to exceed \$700,000.00
City	15% 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 Non-Participating Costs, Preliminary Engineering (PE), Right of Way, and Utility adjustments

2. **Funding Limitation.** No reimbursement shall be made for the costs of Preliminary Engineering, Right of Way acquisition, or Utility adjustments. No reimbursement will be made for work performed by City staff for project administration, engineering, or inspection.

3. **Reimbursement Payments.** The Secretary will make partial payments to the City for amounts not less than one thousand dollars (\$1,000.00) and no more frequently than monthly. Such payments will be made after receipt of proper billing and the Project has been Let. **To be eligible for reimbursement, the Project must be under contract for construction prior to August 19, 2026.** A retainage of five hundred dollars (\$500.00) will be withheld from the final payment until the City completes its obligations under this Agreement, including all requirements of Exhibit A, Minimum Structure and Design Requirements.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Legal Authority.** By signature on this Agreement, the signatory certifies that the signatory has legal and actual authority as representative and agent for the City to enter into this

Agreement on its behalf. The City agrees to adopt all necessary ordinances or resolutions, and to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

2. **Letting and Administration by the City.** The City will prepare or contract to have prepared the Design Plans for the Project, Let the contract, and award the Construction contract to the lowest Responsible Bidder. The City agrees to construct or have constructed the Project in accordance with the final Design Plans; inspect or have inspected the construction; administer the Project; and make the payments due the Contractor, including the portion of cost borne by the Secretary.

3. **Design and Specifications.** The City shall design the Project or contract to have the Project designed in conformity with the appropriate design criteria for the Project in accordance with the City's established procedures, criteria, and industry standards. Specifically, the City agrees to comply with the technical and other requirements listed in Exhibit A - Structure and Design Requirements, which is attached and incorporated into this Agreement, as well as in conformity with applicable state, local, and federal law. The replacement structure design must meet current American Association of State Highway and Transportation Officials (AASHTO) Design requirements. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. 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.*

4. **Consultant Contract Language.** The City shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.

(b) **Progress Reports.** Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) **Third-Party Beneficiary.** Language making the Secretary a third-party beneficiary in the agreement between the City and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third-party beneficiary to this agreement between the City and the Consultant. This third-party beneficiary status

is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

5. **Responsibility for Adequacy of Design.** The City shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items 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 or its Consultant's duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the City, any other political subdivision, or the traveling public. The Secretary makes no representation or express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the City.

6. **Authorization of Signatory.** The City shall authorize a duly appointed representative to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

7. **Inspections.** The City will provide the Construction Engineering necessary to determine substantial compliance with the final Design Plans 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 Construction Engineering, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

8. **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 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, subcontractors, or its consultants. The City shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

9. **Indemnification by Contractors.** The City agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors, 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.

10. **Reimbursement Requests.** The City shall submit invoices to the Secretary for reimbursement of costs incurred by the City for the Project. Invoices shall be submitted in amounts not less than one thousand dollars (\$1,000.00) and no more frequently than once per month. Invoices for reimbursement of costs for Construction and Construction Engineering (CE) are not eligible for reimbursement prior to the Project being let and the Project being under contract for construction prior to the date specified in Article II, paragraph 3.

11. **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.

12. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

13. **Maintenance of Project.** When the Project is completed and final acceptance is issued the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

14. **Cancellation by City.** If the City cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of cost incurred by the Secretary prior to the cancellation of the Project.

15. **Failure to Let.** The City acknowledges and agrees that the City's failure to award the construction contract for the Project by **August 19, 2026**, or within two (2) years from the Project award, will be considered a constructive act of cancellation by the City and the City will be deemed to have cancelled the Project for purposes of this Agreement. In such instance, the City will be subject to the reimbursement requirements set forth in Article III, paragraph 14.

16. **Final Review.** Upon completion of the Project, the City shall notify Secretary and allow the Secretary or Secretary's designee to participate in a final review of the Project to confirm compliance with the terms of this Agreement. Reviews by the Secretary are not done for the benefit of City or its contractors, or agents, or other political subdivision, or the traveling public. The Secretary makes no representation or express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans, specifications, estimates, surveys, and any necessary

investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by City.

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Final Plans and Attachments.** The final Design Plans, specifications, special provisions, Construction Contract Proposal (as available), the agreement estimate for Construction Engineering (if applicable), and other Attachments are all essential documents of this Agreement and are either attached to this Agreement or incorporated by reference and made a part of this Agreement as if set forth in their entirety herein.
2. **Compliance with Federal and State Laws.** The City shall comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances governing the Project undertaken pursuant to this Agreement.
3. **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.
4. **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.
5. **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.
6. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.
7. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City, and their successors in office.
8. **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.
9. **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.

10. **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 as of the Effective Date.

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

- ☒ Exhibit A: Minimum Structure and Design Requirements
- ☒ Civil Rights Attachment
- ☒ Contractual Provisions Attachment (Form DA-146a)

*Note – If left unchecked, then inapplicable.

KANSAS LOCAL BRIDGE IMPROVEMENT PROGRAM FY 2025
(Minimum Structure and Design Requirements)

- ☐ The City will acquire the services of a Professional Engineer, licensed in the state of Kansas, to perform the design and analysis of the project. All plans shall have the seal and signature of the engineer in charge of their development.
- ☐ All bridges shall be designed to carry legal loads without load posting limitations.
- ☐ A scour evaluation shall be performed on all bridges to ensure the bridge is not scour critical. Submit the completed Scour Appraisal Form (found on KART).
- ☐ Provide Load and Resistance Factor Rating (LRFR) superstructure load ratings (including Federal Highway Administration (FHWA) mandated Specialized Hauling Vehicles and Emergency Vehicles). The use of AASHTO Bridge Design and Rating (BrDR) software is preferred. All bridges shall have a completed KDOT Bureau of Local Projects Load Rating Summary Sheet (LRSS) sealed and signed by a licensed Professional Engineer.
- ☐ The owner is responsible for acquiring all right-of-way, permits, and clearances needed for the Project.
- ☐ Within 90 days of completion of construction, submit a complete initial inspection to KDOT Bureau of Local Projects. The initial inspection shall be performed under the supervision of a qualified Bridge Inspection Team Leader.
- ☐ Submit total project costs to KDOT Bureau of Local Projects upon project completion. (Includes but is not limited to right-of-way, utility relocation, design, construction, and inspection services costs.)
- ☐ Basic hydraulic analysis based on HDS-5 or HEC-18 as appropriate.
- ☐ Load and Resistance Factor Design (LRFD) HL-93 superstructure design.
- ☐ Use Allowable Stress Design (ASD) as a minimum for foundation design. Use Modified Engineering News Record Formula for Pile Driving.
- ☐ Bridges less than 75' in length:
 - ☐ Minimum of one geology core sample and analysis report at each bridge site sealed and signed by a qualified licensed professional.
- ☐ Bridges greater than or equal to 75' in length:
 - ☐ Follow requirements in the KDOT LPA Project Development Manual for geology requirements.
 - ☐ A KDOT plan review at the field check stage is required. Geology and planned foundations should be included in the field check plan review set.

Standard industry practice and sound engineering judgment in accordance with the Kansas State Board of Technical Professions shall be exercised at all times throughout the design and analysis phases of the Project.

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.