

PROJECT NO. U-2580-01
INNOVATIVE TECHNOLOGY PROGRAM
THE CITY OF SEDGWICK, KANSAS

CONTRACT

This Grant Contract (“Contract”) is by and between the **Secretary of Transportation** (the “Secretary”), Kansas Department of Transportation (“KDOT”), and the **City of Sedgwick, Kansas** (“Recipient”), collectively referred to as the “Parties.”

RECITALS:

A. As authorized by the Kansas Legislature through K.S.A. § 68-2314c(h) and K.S.A. § 75-5093, the Secretary has developed an Innovative Technology Grant Program (“Program”) under the Eisenhower Legacy Transportation Program.

B. The Program provides financial assistance to eligible applicants for eligible innovative technology projects (“Eligible Projects”) that improve safety, increase total technology investment, and help both rural and urban areas of the state improve the transportation system.

C. The Recipient desires to participate in the Program and has submitted an application to the Secretary to participate in the Program and receive financial assistance for an innovative technology project.

D. The Secretary has determined the Recipient meets the Program’s eligibility requirements and desires to grant an Award of Program funds to the Recipient to administer the Program in accordance with federal, state, and local laws and guidelines promulgated thereunder, in addition to the provisions found in and incorporated into this Contract.

E. The Secretary and the Recipient are empowered by the laws of Kansas to enter into agreements for the construction of transportation projects in the state of Kansas.

F. Cities and counties are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereby agree as follows:

ARTICLE I: DEFINITIONS

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

1. “**Contract**” means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.

2. “**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.

3. “**Construction Contingency Items**” means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.

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

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

6. “**Contractor**” means the entity awarded the construction contract for the Project, if applicable, and any subcontractors working for the Contractor with respect to the Project.

7. “**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 Contract.

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

9. “**Encroachment**” means any building, structure, farming, vehicle parking, storage 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.

10. “**Federal, state, and local laws**” means all applicable statutes, rules, regulations, executive orders, directives, and other laws, including all laws as presently in effect and as may be amended or otherwise altered during the term of this Contract, and all such laws which may be enacted or otherwise become effective during the term of this Contract.

11. “**Final Report**” means a summary prepared by the Recipient describing Project deployment and expected outcomes, which the Recipient shall submit to the Secretary no later than six months following completion of the project.

12. “**Innovative Technology Grant Program**” or “**Program**” means the grant program as described in K.S.A. § 68-2314c(h), which provides funding for eligible multimodal transportation-related innovative technology projects in accordance with K.S.A. § 75-5093, and amendments thereto, that meet an important transportation need such as improving safety, access, and/or mobility while increasing the state’s total technology investment in rural and urban areas of the state.

13. “**Inspector**” means an individual who is a Licensed Professional Engineer or is supervised by a Licensed Professional Engineer; is provided by the Recipient to observe the work performed

and test the materials used in an approved project according to its plans and contract documents; and has successfully completed KDOT's certified inspector training appropriate for the work being inspected.

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. "**Licensed Professional Engineer**" means a person licensed as a professional engineer by the state board of technical professions pursuant to K.S.A. § 74-7001, et seq., and amendments thereto.

16. "**MUTCD**" means the latest version of the Manual on Uniform Traffic Control Devices as adopted by the Secretary.

17. "**Non-Participating Costs**" means the costs of any items or services which the Secretary, acting on the Secretary's own behalf, reasonably determines are not an integral part of the Project.

18. "**Participating Costs**" means expenditures for items and/or services that are (1) an integral part of the Project, as reasonably determined by the Secretary, and; (2) eligible for reimbursement by the Secretary using Program funds.

19. "**Parties**" means the Secretary of Transportation and KDOT, individually and collectively, and the Recipient.

20. "**Preliminary Engineering**" or "**PE**" means the necessary and integral Project pre-construction activities and/or services which include, but are not limited to, the preparation of Design Plans and other such work and/or services necessary for and integral to the Project before the Recipient Lets or Constructs the Project. Such activities and/or services may be performed by the Recipient but are generally performed by a consulting engineering firm.

21. "**Procurement**" means the purchase of items necessary for the Project in accordance with all applicable federal, state, and local requirements.

22. "**Project**" means the endeavor undertaken by the Recipient that is the subject of this Contract being: The completion of a street condition evaluation and assessment for the purpose of making recommendations for street maintenance for city-owned streets in the City of Sedgwick, Kansas. Additional details about Project's limits, activities, and costs are set forth in the "**Project Details Attachment**," which is attached to and incorporated into this Contract by this reference.

23. "**Project Application**" means the Recipient's Innovative Technology Program Application for Program funds, which includes additional project details, which is incorporated into this Contract by this reference.

24. "**Project Completion Date**" means the date by which the Project shall be completed. The Project Completion Date shall be December 31, 2027.

25. “**Project Limits**” means that area within the City of Sedgwick, Kansas to be inventoried and assessed as part of the Project, including all areas between and within the Right of Way boundaries as shown on the “**Project Details Attachment**” which is attached to and made a part of this Contract by this reference.

26. “**Recipient**” means the City of Sedgwick, Kansas, with its principal place of business located at 520 N. Commercial, Sedgwick, KS 67135.

27. “**Right of Way**” means the real property and interests therein necessary for Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

28. “**Secretary**” means the Secretary of Transportation of the State of Kansas, the Secretary’s successors and assigns, and KDOT, individually and collectively.

29. “**Utilities**” or “**Utility**” means all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electrical, 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 Parties agree costs and contributions are estimates to be used for encumbrance purposes and may be subject to change.

The total estimated Project cost is \$34,000.00, and shall be apportioned as follows:

Secretary Share: \$25,500.00.

Recipient Share: \$8,500.00.

ARTICLE III: SECRETARY’S RESPONSIBILITIES

1. **Reimbursement Payments.** The Secretary will make partial payments to the Recipient for amounts not less than \$1,000.00 and no more frequently than monthly only after receipt of proper billing from the Recipient, and if the Project involves Construction, approval by a Licensed Professional Engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, employed by the Recipient that the Project is being constructed within substantial compliance of the Design Plans and the Project Application.

2. **Technical Assistance.** The Secretary will provide the Recipient, upon request, with technical advice and assistance regarding the Project.

ARTICLE IV: RECIPIENT'S RESPONSIBILITIES

1. Accountability for Funds.

a. Cost Accounting. Upon request by the Secretary, and in order to enable the Secretary to report all costs of the Project to the legislature, the Recipient shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the Recipient to any party outside of the Secretary and all costs incurred by the Recipient not to be reimbursed by the Secretary for any phase or any other major expense associated with the Project.

b. Project Audits. The Recipient shall participate and cooperate with the Secretary in any audit of the Project. The Recipient 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 Contract. If any such audits reveal payments have been made with state funds by the Recipient for items considered Non-Participating Costs, the Recipient shall promptly reimburse the Secretary for such items upon notification by the Secretary.

c. Retention of Records. The Recipient shall maintain accounting records and other evidence pertaining to the costs incurred and make the records available at its office at all reasonable times during the period of Contract performance and for five (5) years thereafter. Such accounting records and other evidence pertaining to the costs incurred shall be made available for inspection by the Secretary or the Secretary's authorized representatives, and copies thereof shall be furnished if requested.

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

2. Authority. By signing this Contract, the Recipient certifies that the signatory has legal and actual authority as representative and agent for the Recipient to enter into this Contract. The Recipient shall take any administrative, legal, or other steps necessary to give full effect to the terms of this Contract.

3. Authorization to Secure Benefits of State Funding. The Recipient authorizes the Secretary to take such steps as deemed necessary or advisable by the Secretary to secure the benefits of state aid for this Project.

4. Compliance with Federal and State Laws. The Recipient shall comply with all applicable state and federal laws and regulations applicable to this Project.

5. Contracting by Recipient. If the Project involves Construction, the following provisions shall apply:

a. Consultant Contract Language. The Recipient shall include language requiring conformity

with subsection (a)(iv) of Article IV, paragraph 7 in all contracts between the Recipient and any Consultant with whom the Recipient has contracted to perform services for the Project. In addition, any contract between the Recipient and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Contract must contain language requiring conformity with subsection (a)(iv) of Article IV, paragraph 7. In addition, any contract between the Recipient and any Consultant with whom the Recipient has contracted to prepare and certify Design Plans for the Project covered by this Contract must also contain the following provisions:

i. 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.

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

iii. Third-Party Beneficiary. Language making the Secretary a third-party beneficiary in the agreement between the Recipient 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 Recipient 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 Recipient or both incurred or shall incur because the Consultant failed to comply with its contract obligations under this Contract or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the Recipient 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.”

b. Performance Bond. The Recipient shall require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

c. Sworn Statements of Third Parties. The Recipient shall require each third party it has retained for the Project to certify it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Project. The sworn statement shall be in the form of an affidavit and shall be sworn to before a person who is authorized by the laws of Kansas to administer oaths. The original of the sworn statement shall be filed with the Recipient when the proposal is submitted, a copy of which the Recipient shall submit to the Secretary upon the Secretary's request.

d. Third-Party Indemnification. The Recipient shall require all third parties the Recipient retains for the Project that are not a party to this Contract to indemnify, hold harmless, and save the Secretary and the Recipient from all claims including, but not limited to, personal injury and property damage claims, arising out of the act of omission of any third party the Recipient retains

for the project, their agents, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the Recipient defends a third party's claim, the third party, as the case may be, shall indemnify the Secretary and the Recipient for damages paid to the third party and all related expenses either the Secretary, the Recipient, or both incur in defending the claim.

6. **Inspections by Secretary; Corrective Work.** Representatives of the Secretary may make periodic inspections of the Project and the records of the Recipient as may be deemed necessary or desirable. The Recipient shall direct or cause its Contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of state participation. The Secretary does not undertake (for the benefit of the Recipient, 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 Project Application and, if applicable, the Design Plans.

7. **Design Provisions.**

a. If the Project involves Construction, the following provisions apply:

i. Preparation and Completion of Design Plans. The Recipient shall prepare or have prepared Design Plans for the Project, which shall comply with the Board of Technical Professions requirements and be completed no later than the Project schedule's due dates as set by the Secretary, exclusive of uncontrolled delays.

ii. Submission of Plans to Secretary. The Recipient shall submit to the Secretary a complete copy of the Design Plans for the Project by a Licensed Professional Engineer, a licensed professional architect, and/or licensed landscape architect, as applicable, attesting to the conformity of the Design Plans with subsection (a)(iv) of Article IV, paragraph 7 If applicable, the Design Plans shall be signed and sealed by the Licensed Professional Engineer, licensed professional architect, and/or licensed landscape architect, as applicable, responsible for preparation of the Design Plans. Geological investigations or studies shall 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. All technical professionals involved in the Project are required to meet the applicable licensing, certification, and other requirements as stated in K.S.A. § 74-7001, *et seq.*

iii. Responsibility for Adequacy of Design. The Recipient shall be responsible for and require any Consultant the Recipient retains for the Project 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 Recipient's or any of the Recipient's 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 Recipient, any other political subdivision, or the traveling public. The Secretary makes no representation or any 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 Recipient.

iv. Conformity of Plans. The Recipient shall accurately and adequately design and construct or have the Project accurately and adequately designed and constructed, in conformity with federal, state, and local laws and design criteria appropriate for the Project. The Secretary makes no representation or any 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 for the Project by or for the Recipient.

v. Retention of Design Plans. The Recipient shall maintain a complete set of reproducible Design Plans, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The Recipient shall make such reproducible prints, drawings, and certifications available for inspection by the Secretary upon the Secretary's request. The Recipient shall provide access to or copies of all the above-mentioned documents to the Secretary.

vi. Project Testing and Deployment. The Recipient shall test and deploy the Project in accordance with the Project Application and, if applicable, the Design Plans.

b. If the Project involves software or technology infrastructure, such software or technology infrastructure shall be designed by a certified professional.

8. **Funding Terms and Conditions**.

a. Procurement. If the Project involves Procurement, the following provisions apply:

i. Methods of Procurement. The Recipient shall procure services and items including, but not limited to, any equipment and materials that are necessary to complete the Project in accordance with documented procurement methods of either the Recipient or the Secretary.

ii. Procurement of Items and Services. The Recipient shall procure all items and services necessary to complete the Project in accordance with the Project Application and Design Plans. The Recipient shall submit to the Secretary one (1) invoice showing the quantity and type of each item and/or service procured for the Project.

iii. Procurement Documentation. The Recipient shall separately list and itemize all Participating Cost procurement items and/or services from the Non-Participating procurement items and/or services on the Final Design Plans and procurement documents.

iv. Itemization of Participating Costs. The Recipient shall submit to the Secretary an itemized list of all Participating Cost items and/or services to be used in the Project. If the Recipient submits an incomplete list of all Participating Cost items and/or services to be used for the Project, the incomplete list will be returned to the Recipient which may result in a delay of reimbursement payments to the Recipient.

b. **Reimbursement Payments.** Reimbursement payments made to the Recipient by the Secretary shall only be made after receipt of proper billing and approval by the Recipient that the Project is in substantial compliance with the Project Application, and if the Project involves Construction, a Licensed Professional Engineer, a licensed professional architect, and/or licensed landscape architect, employed by the Recipient that the Project is being constructed within substantial compliance of the Design Plans and Project Application.

c. **Payment of Consultants and Contractors.** The Recipient shall remit all payments due to each party the Recipient retains for the purpose of completing the Project which includes, but is not limited to, Consultants and Contractors, the portion of cost borne by the Secretary, in a timely manner upon the Recipient's receipt of invoices itemizing all expenses for which payment is due.

d. **Repayment.** If the Project involves procurement of equipment, the Recipient acknowledges and warrants equipment purchased under this Contract shall be used in accordance with the Project scope detailed in the Project Application. If the equipment is not being used during its customary useful life under industry standards or not in accordance with the Project scope, the Recipient shall reimburse the Secretary for the cost of such equipment less any depreciation value. The Recipient shall make payment within thirty (30) days after receiving notice from the Secretary for reimbursement of the purchase cost minus depreciation.

e. **Prior Costs Incurred.** The Recipient shall be responsible for one hundred percent (100%) of any Project costs incurred by the Recipient for the Project prior to the funding for the Project being authorized, obligated, and approved by the Secretary.

9. **Incorporation of Project Application.** The Recipient shall undertake and complete the Project in conformance with the Project Application, which is incorporated into this Contract by this reference, and in accordance with the terms and conditions of this Contract.

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

11. **Inspections.** If the Project involves Construction, the Recipient is responsible for providing Construction Engineering for the Project in accordance with any applicable state and local rules and guidelines and the following provisions apply.

a. **By Recipient Personnel.** Recipient personnel who are fully qualified to perform the inspection services in a competent and professional manner may be utilized by the Recipient to inspect the Project, in which case the Recipient shall provide the Secretary with a list of such personnel who will act as the assigned inspectors and their certifications.

b. By a Consultant. If the Recipient does not have sufficient qualified engineering employees to accomplish the Construction Engineering on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary services. The Consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers (K.S.A. § 74-7021), the FHWA and all federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications.

c. Protective Clothing. The Recipient shall require at a minimum all Recipient personnel and all Consultant personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the Recipient executes an agreement for Construction Engineering, the agreement shall contain this requirement as a minimum. The Recipient may set additional clothing requirements for adequate visibility of personnel.

12. **Insurance**. If the Project involves Construction, the Recipient shall require the Contractor to obtain insurance only from insurers authorized to transact insurance business in Kansas as an authorized, admitted insurer. If the Contractor is unable to obtain an admitted insurer under K.S.A. § 40-214, the Recipient shall request the Secretary's permission to allow the Contractor to use a non-admitted insurer authorized to write excess surplus lines coverage under K.S.A. § 40-246e. In such cases, the Contractor must be prepared to demonstrate to the Secretary and the Kansas Insurance Commission why the Contractor was unable to use an admitted carrier as required by State statute. The Recipient shall require the Contractor to use only forms that the Kansas Insurance Commission has approved unless the Secretary has given permission to use a non-admitted insurer under K.S.A. § 40-246e. The Contractor must include any endorsements that the Kansas Insurance Commission requires. In addition, the Recipient shall require the Contractor to comply with the following insurance provisions:

a. "Commercial General Liability" insurance in an amount of a minimum of \$1,000,000.00 each occurrence, \$2,000,000.00 aggregate for bodily injury and property damage combined, and \$2,000,000.00 aggregate for products and completed operations. At a minimum, the Commercial General Liability Policy shall contain the following coverages:

- i. Premises and operations;
- ii. XCU (explosion, collapse, and underground hazards);
- iii. Products and completed operations; and
- iv. Contractual liability (for Contractor's indemnification obligations).

b. "Automobile Liability" insurance in an amount at a minimum of \$1,000,000.00 each occurrence for bodily injury and property damage combined and that covers owned, hired, and non-owned vehicles.

c. “Workers’ Compensation” and “Employer’s Liability” insurance that complies with K.S.A. § 44-532, related statutes, and amendments thereto.

d. At the KDOT Project monitor’s request, the Recipient shall provide copies of the Contractor’s insurance policies and certificates of insurance showing the Contractor carries insurance in the amounts and types required and showing the effective and expiration dates of such insurance. The certificates shall provide that the insurance company endeavors to give the Recipient thirty (30) days’ notice of policy cancellation, policy non-renewal, or a material change in the policy.

13. **Letting and Administration by Recipient.** If the Project involves Construction, the Recipient 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 Recipient further agrees to administer the Construction of the Project in accordance with the Design Plans, and the current version of the Recipient’s currently approved procedures, and administer the payments due the Contractor, including the portion of the cost borne by the Secretary.

14. **Project Documents.**

a. **Seals and Signatures.** If applicable, the Recipient shall comply with all federal, state, and local laws and regulations governing the requirements for the sealing and signing of Project documents in accordance with K.A.R. 66-6-1.

b. **Reports.** The Recipient shall submit to the Secretary a Final Report, which shall include a summary of Project deployment and expected outcomes, no later than six (6) months following completion of the Project.

15. **Responsibilities Upon Project Completion.** If the Project involves Construction, the following provision applies:

a. **Maintenance, Inspections, and Repairs.** When the Project is completed, the Recipient shall, at its own cost and expense, maintain, inspect, and make necessary repairs of the Project and make ample provision each year for the same. Project maintenance includes, but is not limited to, snow removal. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the Recipient shall begin the necessary repairs within a reasonable time not to exceed thirty (30) days and prosecute the work continuously until it is satisfactorily completed. Any notification by the State Transportation Engineer, however, is not intended to and shall not be construed to be an undertaking of the Recipient’s duties and obligations to maintain, inspect, and make necessary repairs to the Project.

16. **Right of Way.** If the Project involves any KDOT Right of Way, all Right of Way provided for the Project shall be used solely for public street purposes. Any disposal of or change in the use of Right of Way or in access after Construction of the Project shall require prior written approval by the Secretary.

17. **Traffic Control.** If the Project involves Construction, the Recipient agrees to the following

with regard to traffic control for the Project:

a. **Temporary Traffic Control.** The Recipient shall provide a temporary traffic control plan within the Design Plans, which includes the Recipient'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 Recipient's temporary traffic control plan must be in conformity with the latest version of the MUTCD, as adopted by the Secretary, and be in compliance with the American with Disabilities Act of 1990 (ADA) as amended by the ADA Amendments Act of 2008, implementing regulations at 28 C.F.R. Part 35, and Federal Highway Administration (FHWA) rules, regulations, and guidance pertaining to the same.

b. **Permanent Traffic Control.** 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, must conform to the latest version of the MUTCD as adopted by the Secretary.

c. **Parking Control.** The Recipient shall control parking of vehicles within the Project Limits throughout the length of the Project covered by this Contract.

d. **Traffic Movements.** The arterial characteristics inherent in the Project shall be uniform in information and regulations to the end that traffic may be safely and expeditiously served. The Recipient shall adopt and enforce rules and regulations governing traffic movements deemed necessary and/or desirable by the Secretary.

18. **Utilities.** If the Project involves Construction, the Recipient shall be solely responsible for determining location of and relocating and/or adjusting utilities in an expeditious manner and, if applicable, certifying that all privately owned utilities are properly permitted.

ARTICLE V: GENERAL PROVISIONS

1. **Acceptance.** No contract provision or use of items by the Secretary shall constitute acceptance or relieve the Recipient of liability in respect to any expressed or implied warranties.

2. **Amendment.** Any amendment to this Contract shall be in writing and signed by the Parties.

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

4. **Cash Basis and Kansas Budget Laws.** Nothing in this Contract is intended to violate the provisions of the Kansas Cash Basis Law (K.S.A. § 10-1100, *et seq.*) and the Kansas Budget Law (K.S.A. § 79-2935, *et seq.*) and at all times should be construed and interpreted so as to ensure that the Recipient is at all times in compliance with such laws.

5. **Certification of Procurement.** The Recipient shall comply with the “**Certification of Company Not Currently Engaged in The Procurement or Obtainment of Certain**

Equipment, Services, or Systems,” which is attached to and made a part of this Contract.

6. **Certification Regarding No Boycott of Israel**. If the total value of this Contract exceeds \$100,000.00, a “**Certification of Company Not Currently Engaged in a Boycott of Goods or Services from Israel**” shall be attached to and incorporated into this Contract.

7. **Certification Regarding Sexual Harassment**. If the Recipient is not a local public authority, the Recipient shall comply with Executive Order 18-04 (February 5, 2018), by signing the “**Policy Regarding Sexual Harassment Attachment**,” which shall be attached to and incorporated into this Contract by this reference.

8. **Civil Rights Act**. The “**Civil Rights Act Attachment**” pertaining to the implementation of the Civil Rights Act of 1964, is attached to and incorporated into this Contract by this reference.

9. **Compliance with Federal and State Laws**. The Recipient shall comply with all applicable state and federal laws and regulations. The Recipient represents and warrants that any Contractor and/or Consultant performing any services on the Project shall also comply with all applicable state and federal laws and regulations.

10. **Confidentiality**. Documents and information pertaining to this Contract shall not be disclosed to any third person or entity not a Party to this Contract unless required to do so pursuant to the Kansas Open Records Act (KORA) K.S.A. § 45-215, *et seq.* or by order of court or subpoena.

11. **Contractual Provisions**. The provisions found in the current version of the “**Contractual Provisions Attachment (Form DA-146a)**,” which is attached hereto, are hereby incorporated into this Contract, and made a part thereof.

12. **Counterparts**. This Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

13. **Debarment of State Contractors**. Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Contract may be barred for up to a period of three (3) years, pursuant to K.S.A. § 75-37,103, or have its work evaluated for pre-qualification purposes. Contractors retained by the Recipient for the Project shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or shall perform work under this Contract that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense for obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. An individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 % or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in a breach of this Contract for cause.

14. **Entire Agreement.** This Contract, with all attached documents listed in the Index of Attachments, expresses the entire agreement between the Parties with respect to the Project. No representations, promises, or warranties have been made by the Parties that are not fully expressed or incorporated by reference in this Contract.

15. **Headings.** All headings in this Contract 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.

16. **Incorporation of Design Plans.** The final Design Plans for the Project are made a part of this Contract by this reference.

17. **Independent Contractor Relationship.** The relationship of the Secretary and the Recipient shall be that of an independent contractor, and nothing in this Contract shall be construed to create a partnership, joint venture, or employee-employer relationship. The Recipient is not the agent of the Secretary and is not authorized to make any representation, contract, or commitment on behalf of the Secretary. It is expressly understood that any individual performing services under this Contract on behalf of the Recipient shall not be deemed to be an employee or independent contractor of the Secretary, and such individual shall not be entitled to tax withholding, workers' compensation, unemployment compensation or any employee benefits, statutory or otherwise, from the Secretary. The Recipient shall be solely responsible for the reporting and payment of income, social security, and other employment taxes due to the proper taxing authorities with respect to such personnel. The Recipient shall indemnify, defend and hold harmless the Secretary and its directors, officers, employees, and agents from and against any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney's fees, relating to the reporting and payment of income, social security, and other employment taxes and the provision of employee benefits (including but not limited to workers' compensation, unemployment insurance, and health insurance coverage or assessable payments required under state or federal laws) with respect to such individual performing services under this Contract on behalf of the Recipient. This provision shall survive the expiration or termination of this Contract.

18. **Industry Standards.** Where not otherwise provided in this Contract, materials or work called for in this Contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all applicable federal, state, and local laws and rules and regulations promulgated thereunder.

19. **K.S.A. § 46-239(c) Certification.** If the Recipient is not a local public authority, the Recipient shall certify its compliance with K.S.A. § 46-239(c) by signing the "**Certification of Compliance with K.S.A. § 46-239(c) Attachment,**" which shall be attached to and incorporated into this Contract by this reference.

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

21. **Nondiscrimination and Workplace Safety.** The Recipient shall comply with all federal,

state, and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules, or regulations may result in termination of this Contract.

22. **Notices**. Any notice required or submitted under this Contract shall be deemed given if personally delivered or mailed by registered or certified mail, return receipt requested and postage prepaid, to the following addresses of the Parties or such other addresses as either party shall from time to time designate by written notice. Any notice required or submitted under this Contract shall be deemed given if personally delivered or mailed by registered or certified mail, return receipt requested and postage prepaid, to the following addresses of the Parties or such other addresses as either party shall from time to time designate by written notice.

The Secretary:

Kansas Department of Transportation
Attn: Mitch Sothers
Bureau of Innovative Technologies
700 SW Harrison Street, 2nd floor
Topeka, KS 66603-3754

The Recipient:

The City of Sedgwick, Kansas
Attn: City Administrator
502 N. Commercial
Sedgwick, KS 67135

23. **Prohibition of Certain Technologies**. The Recipient shall comply with 2 C.F.R. § 200.216 and 2 C.F.R. § 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds 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.

24. **Project Modifications**. The Recipient shall send formal notice and request for approval to the Secretary for changes to the Project that include, but are not limited to, the following:

- a. Fiscal Year the Project is to be awarded.
- b. Project description.
- c. Project scope.
- d. Project Completion Date.
- e. Project funding.

Any changes in the plans and specifications during deployment shall require the Secretary's written approval.

25. **Restriction on State Lobbying.** Funds provided by the Secretary under this 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.

26. **Severability.** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Contract shall not be affected, and each provision of this Contract shall be enforced to the fullest extent permitted by law.

27. **Technical Advice and Assistance; Limitations.** Technical advice, assistance, or both, provided by the Secretary under this Contract shall not be construed as an undertaking by the Secretary of the duties of the Recipient or any other individual or entity, or the duties of any Consultant, Contractor, Licensed Professional Engineer, or Inspector hired by the Recipient.

28. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Contract and for the payment of the charges hereunder, the Secretary may terminate this Contract 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 Contract.

29. **Waiver.** A Party's failure to exercise, or delay in exercising any right, power, or privilege under this Contract shall not operate as a waiver. Further, no single or partial exercise of any right, power, or privilege shall preclude any other or further exercise thereof.

The Signature Page Immediately Follows This Paragraph.

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

Recipient: The City of Sedgwick, Kansas

Kansas Department of Transportation
Secretary of Transportation

Signature

Greg M. Schieber, P.E. (Date)

Printed Name

Deputy Secretary and
State Transportation Engineer

Title

Date

Index of Attachments

- Project Details Attachment
- Certification of Company not Currently Engaged in the Procurement or Obtainment of Certain Equipment, Services, or Systems
- Certification of Company not Currently Engaged in a Boycott of Goods or Services from Israel
- Policy Regarding Sexual Harassment
- Civil Rights Act Attachment
- Contractual Provisions Attachment (Form DA-146a)
- Certification of Compliance with K.S.A. § 46-239(c) Attachment

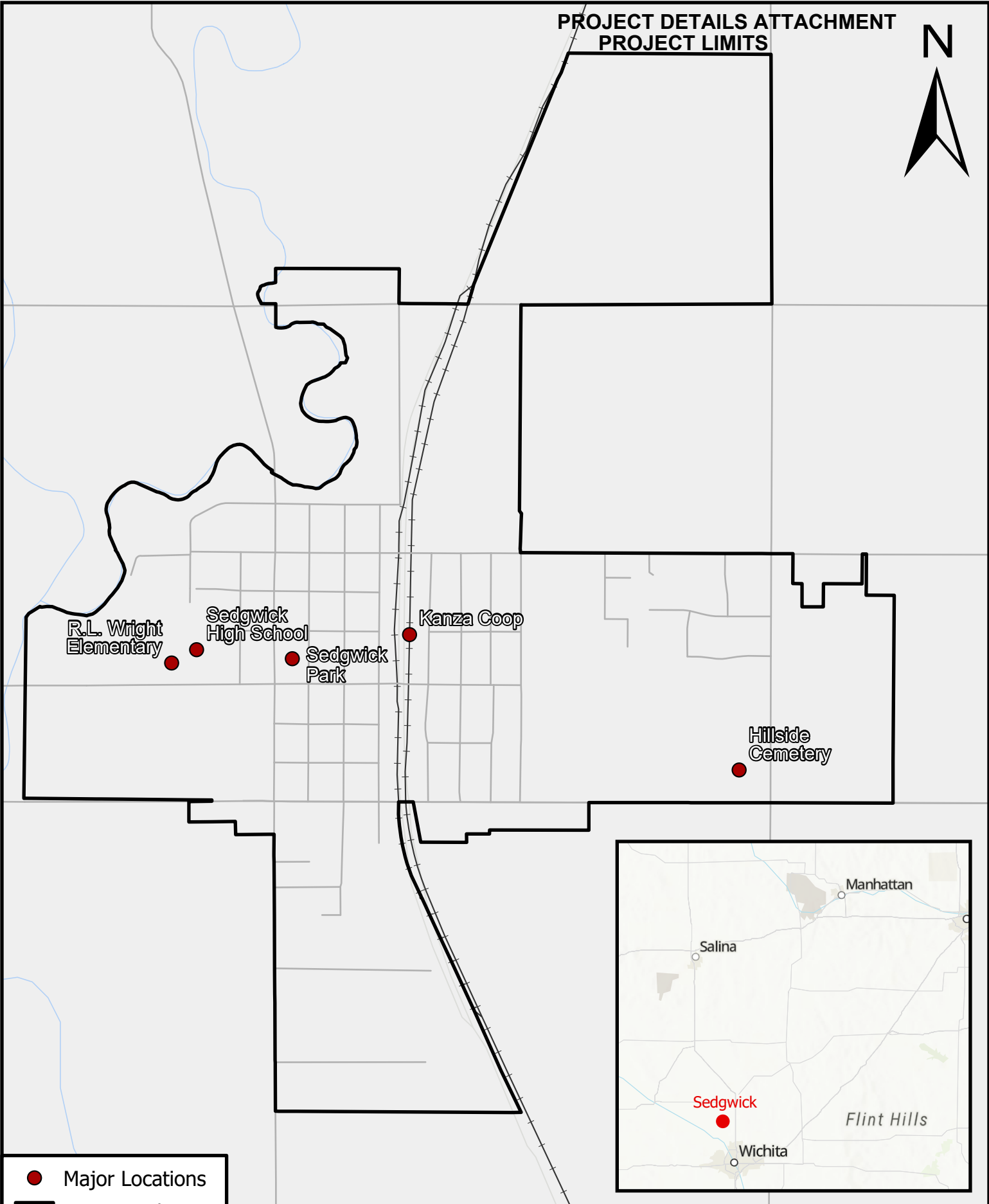
Street Condition Assessment Scope

November 2024

Project will consist of completing a street condition evaluation and making recommendations for street maintenance for city-owned streets in the City of Sedgwick. Pavement condition information will be collected via a GoPro camera mounted on a vehicle driving at speed. The camera takes continuous video, and the video is run through a calibrated algorithm to determine the condition rating for each street segment based on the 1-10 PASER methodology/scale. The results are displayed in a GIS Layer. Deliverables include a GIS Dashboard with interactive queries, a map display, and a quantity estimator and a summary report with recommendations for maintenance treatments (e.g., microsurfacing, crack sealing, chip seal, etc.) and associated cost estimates.

Specific services include:

- Create a GIS street layer (lines) for city street network including arterial, collector, and local streets, drawn at street centerlines, divided into one-block segments, and attributed with average dimensions.
- Create a GIS dashboard to include a quantity estimator, queries/bar charts, and other infographics. Provide staff training on the dashboard.
- Collect pavement condition on all city maintained streets using a GoPro camera mounted on a vehicle driving at speed
- Analyze collected condition data using PASER methodology using an artificial intelligence algorithm
- Bring PASER ratings into the dashboard and finalize dashboard and layers
- In collaboration with client, develop prioritization criteria (including condition rating), maintenance recommendations, and planning level cost estimates.
- Present the results and dashboard to the client



- Major Locations
- ▭ City Boundary
- Roads
- + Railroads

Sedgwick Location



PROJECT DETAILS ATTACHMENT

OWNER: City of Sedgwick, KS
 PROJECT: Street Condition Inventory and Assessment
 PEC PROJECT NO: 241015-999
 DATE: November 13, 2024



ITEM NO.	DESCRIPTION	QUANTITY	UNIT		
				UNIT PRICE	COST
PLANNING LEVE ESTIMATE					
1	Street Assessment	1	1	\$ 17,000.00	\$ 17,000.00
2	5 - Year Maintenance Plan	1	1	\$ 10,000.00	\$ 10,000.00
3			Total	\$ -	\$ 27,000.00
4	OPTIONAL			\$ -	\$ -
5	Signs Inventory *	1	1	\$ 3,500.00	\$ 3,500.00
6	Pavement Markings Inventory **	1	1	\$ 3,500.00	\$ 3,500.00
7					
8			Total	\$ -	\$ 7,000.00
9				\$ -	\$ -
10				\$ -	\$ -
11				\$ -	\$ -
12				\$ -	\$ -
13				\$ -	\$ -
14				\$ -	\$ -
15				\$ -	\$ -
16				\$ -	\$ -
17				\$ -	\$ -
18				\$ -	\$ -
19				\$ -	\$ -
20				\$ -	\$ -

*

* includes inventory, condition, and sign post type

** includes line striping inventory & condition, pavement markings (symbols) inventory & condition

**CERTIFICATION OF COMPANY NOT CURRENTLY ENGAGED IN
THE PROCUREMENT OR OBTAINMENT OF CERTAIN EQUIPMENT, SERVICES, OR SYSTEMS**

WHEREAS, pursuant to Public Law 115-232, Section 889 of the John S. McCain National Defense Authorization Act of 2019, “covered telecommunications equipment or services” is defined as:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

WHEREAS, a “covered foreign country” means any of the following: (1) The People’s Republic of China, (2) The Russian Federation, or (3) any country that is a state sponsor of terrorism¹.

WHEREAS, foreign adversaries are increasingly creating and exploiting vulnerabilities in covered telecommunications equipment which store and communicate vast amounts of sensitive information and support infrastructure and emergency services, in order to commit malicious cyber-enabled actions;

WHEREAS, the unrestricted acquisition or use in the State of Kansas of covered telecommunications equipment designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in technological equipment, services, or systems; and

WHEREAS, the State of Kansas has an interest in protecting itself against threats related to foreign adversary’s exploitation of vulnerabilities in covered telecommunications equipment.

THEREFORE, Contractor certifies that it shall not provide or procure to the State of Kansas or any agency thereof any covered telecommunications equipment either in whole or in part of any product or during the commission of any service.

FURTHERMORE, and notwithstanding any other contracts or agreements with Contractor, if Contractor has violated, misrepresented, or otherwise fails to comply with this certification document as determined by the State, the State may terminate any contract without penalty with Contractor immediately.

¹ Designations of a “state sponsor of terrorism” may be found at the U.S. Department of State website. <https://www.state.gov/state-sponsors-of-terrorism/#:~:text=Currently%20there%20are%20four%20countries,%2C%20Iran%2C%20and%20Syria.&text=For%20more%20details%20about%20State,in%20Country%20Reports%20on%20Terrorism>.

By signing the below, Contractor acknowledges and agrees to comply with the provisions of this policy.

CONTRACTOR

Signature, Title

Date

Policy Regarding Sexual Harassment

WHEREAS, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

WHEREAS, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

WHEREAS, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

WHEREAS, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

NOW THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

Agreement to Comply with the Policy Against Sexual Harassment, Discrimination, and Retaliation.

I hereby acknowledge that I have received a copy of the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 and agree to comply with the provisions of this policy.

Signature and Date

Printed Name

**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);
- 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 non-State Agency Contracting Party's standard contract form, that form must be altered to contain the following provision:

The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 05-25), 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 or Funding Source:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated or no longer exist to continue the function performed in this Contract and for the payment of the charges hereunder due to the loss of the funding source, the Contracting State Agency may terminate this Contract immediately or at the end of its current fiscal year. The Contracting State Agency agrees to give written notice of termination to the non-State Agency Contracting Party 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. The non-State Agency Contracting Party shall have the right, at the end of such fiscal year, to take possession of any equipment provided to the Contracting State Agency under the contract. The Contracting State Agency will pay to the non-State Agency Contracting Party all regular contractual payments incurred prior to the period of notification or through the end of the fiscal year as determined by period of notification given by the Contracting State Agency, plus contractual charges incidental to the return of any such equipment. Upon termination of the Contract by the Contracting State Agency, title to any such equipment shall revert to the non-State Agency Contracting Party at the end of the Contracting State Agency's current fiscal year. The termination of the Contract pursuant to this paragraph shall not cause any penalty to be charged to the Parties.
4. **Disclaimer of Liability:** No provision of this contract will be given effect that attempts to require the Contracting State Agency to defend, hold harmless, or indemnify any non-State Agency Contracting Party or third party for any acts or omissions. The liability of the Contracting State Agency is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).

5. **Anti-Discrimination Clause:** The non-State Agency Contracting Party 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 non-State Agency Contracting Party 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) the non-State Agency Contracting Party agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) the non-State Agency Contracting Party 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 non-State Agency Contracting Party 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 Contracting State Agency has agreed to binding arbitration, or the payment of damages or penalties. Further, the Contracting State Agency does 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 Contracting State Agency 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 non-State Agency Contracting Party thereby represents that such person is duly authorized by the non-State Agency Contracting Party to execute this Contract on behalf of the non-State Agency Contracting Party and that the non-State Agency Contracting Party agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The Contracting State Agency 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 Contracting State Agency 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 non-State Agency Contracting Party shall bear the risk of any loss or damage to any property in which the non-State Agency Contracting Party 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 Contracting State Agency 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.
14. **Restricted Funding Source:** The non-State Agency Contracting Party acknowledges and understands the Contracting State Agency's share of the Contract's total, actual, and eligible costs may be funded through the receipt of or reimbursement through federal funds. The Contracting State Agency does not assume any liability in connection with the Contract's total, actual, and eligible costs which may be paid through the receipt of or reimbursement through federal funds. The non-State Agency Contracting Party shall reimburse the Contracting State Agency for any funds approved for this Contract and expended by the Contracting State Agency for which the Contracting State Agency is not reimbursed by the Federal Government or for which such funds are determined by the Federal Government to no longer be available to be used by the Contracting State Agency for said Contract.

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

_____ 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: _____

Date: _____

Contract/
Project No: _____
(if applicable)

County: _____
(if applicable)