

City of Sedgwick
City Council Meeting
March 5, 2025

TO: Mayor and City Council

SUBJECT: KDOT Transportation Alternatives Grant

INITIATED BY: Administration

AGENDA: New Business

Recommendation: Approve the agreement with the Kansas Department of Transportation (KDOT) as presented.

Background: The City of Sedgwick was awarded \$269,231 as part of the 2024 Transportation Alternatives Grant solicitation for the Commercial Avenue Pedestrian Improvements Project that will bring improvements to the downtown corridor. If approved, engineering design and construction will take place in 2026. The City will utilize PEC as the engineer and construction administrator for the project. Preliminary drawings for the project and engineer's estimate currently foresee the entire project covered by the grant funding. This is subject to change dependent upon market conditions at time of construction.

Financial Considerations: The awarding from KDOT was for the full request and is anticipated to cover the entire project costs. This project will be governed by Federal Funding requirements including the Buy America requirements. Deviations from the current design plan, market conditions, and other unforeseen circumstances could increase the cost of the project. Any increases would result in the City being responsible for project costs outside of the awarded amount.

Recommendations/Actions: It is recommended that the governing body approve the agreement with the Kansas Department of Transportation as presented.

Attachments: Contract

PROJECT NO. TE-0576-01
ACTA-T057(601)
TRANSPORTATION ALTERNATIVES PROJECT
SEDGWICK: COMMERCIAL AVENUE PEDESTRIAN IMPROVEMENTS
CITY OF SEDGWICK, KANSAS

A G R E E M E N T

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

RECITALS:

- A. The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portions of Federal funding allocated under the current Federal-Aid Transportation Act for Transportation Alternatives (TA) projects.
- B. The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”) continues the Transportation Alternatives set-aside from the Surface Transportation Block Grant Program (STBG) previously under Fixing America’s Surface Transportation Act (FAST Act).
- C. The Secretary is empowered to pass through STBG funds for TA projects to eligible state agencies or local governments.
- D. The Secretary and the Project Sponsor are empowered by the laws of Kansas to enter into agreements for Federal STBG funding under the Transportation Alternatives Provision of the current Federal-Aid Transportation Act.
- E. The Project Sponsor has requested, and the Secretary has authorized, a Transportation Alternatives (TA) Project (“Project”), as further described in this Agreement.
- F. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments may be entitled to receive assistance in the financing of TA projects, provided such work is done in accordance with applicable state and federal law.

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. **“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”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
4. **“Construction Engineering” or “CE”** 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 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 Agreement.
8. **“Effective Date”** means the date this Agreement 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 Fiscal Year (FFY)”** means the fiscal year as determined by the FHWA which begins October 1 and ends on September 30 of the following calendar year.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Fiscal Year (FY)”** means the state’s fiscal year which begins July 1 and ends on June 30 of the following calendar year.
13. **“Hazardous Waste”** 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.

14. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS 66603-3745.
15. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
16. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
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 Project Sponsor.
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 Construction endeavor to be undertaken by the Project Sponsor, as and when authorized by the Secretary prior to Letting, being: **Project No. TE-0576-01, to add streetscape improvements, construct new sidewalks, install ADA ramps, mill and overlay, and relevel existing 10-foot sidewalks on the west side of North Commercial Avenue from 5th Street to 6th Street in Sedgwick, 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. **“Project Sponsor”** means the City of Sedgwick, Kansas, with its place of business at 520 N Commercial Avenue, Sedgwick, KS 67135.
23. **“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.
24. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.

25. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and the Secretary’s successors and assigns.
26. **“Useful Life Period”** means a sufficient period of time, as specifically designated in this Agreement in Article V, paragraph 2, to secure the investment of federal funds in the Project based on the nature and magnitude of Project costs and generally accepted economic or useful life cycle norms for the type of Construction involved in the Project.
27. **“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 Total Actual Costs of Construction include all Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

Party	Responsibility
Secretary	100% of Total Actual Costs of Preliminary Engineering (PE) Construction, and Construction Engineering (CE), not to exceed \$269,231.00
Project Sponsor	0% of Total Actual Costs of PE, Construction, and CE until the Secretary’s funding limit is reached 100% of Total Actual Costs of PE, Construction, and CE after the Secretary’s funding limit is reached 100% of Total Actual Costs of Right of Way, Utility Adjustments, and Non-Participating Costs

ARTICLE III

SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the Project Sponsor acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives such that the Project Sponsor may obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the Project Sponsor. The Secretary further agrees, as agent for the Project Sponsor, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the Project Sponsor.

3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the Project Sponsor 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 Project Sponsor defends a third party's claim, the Contractor shall indemnify the Secretary and the Project Sponsor for damages paid to the third party and all related expenses either the Secretary or the Project Sponsor or both incur in defending the claim.

4. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the Project Sponsor is responsible and shall then transmit the complete and final billing to the Project Sponsor.

ARTICLE IV

PROJECT SPONSOR RESPONSIBILITIES:

1. **Secretary Authorization.** The Project shall be undertaken on behalf of the Project Sponsor by the Secretary acting in all things as its agent, and the Project Sponsor hereby constitutes and appoints the Secretary as its agent. All things done by the Secretary in connection with the Project are authorized, adopted, ratified, and confirmed by the Project Sponsor to the same extent and with the same effect as though done directly by the Project Sponsor acting in its own individual capacity. The Secretary is authorized by the Project Sponsor to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

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

3. **Conformity with State and Federal Requirements.** The Project Sponsor shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines, KDOT's Design Engineering Requirements, the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of

the Bureau of Traffic Engineering's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project. The Project Sponsor will be responsible for construction of any traffic signal and/or sidewalk improvements that are necessary to comply with Public Right-of-Way Accessibility Guidelines (PROWAG), regardless of whether such improvements are deemed non-eligible/non-participating bid items by the Secretary for reimbursement purposes.

4. **Design and Specifications.** The Project Sponsor shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the Project Sponsor shall have the Design Plans submitted to the Secretary 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 the items in Article IV, paragraph 3 above. The Design Plans must 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. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer, who is responsible for the preparation of the geological investigations or studies. 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.*

6. **Consultant Contract Language.** The Project Sponsor shall include language requiring conformity with Article IV, paragraph 3 above, in all contracts between the Project Sponsor and any Consultant with whom the Project Sponsor has contracted to perform services for the Project. In addition, any contract between the Project Sponsor 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 IV, paragraph 3 above. In addition, any contract between the Project Sponsor and any Consultant with whom the Project Sponsor 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 Project Sponsor (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 Project Sponsor 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 Project Sponsor 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 Project Sponsor 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 Project Sponsor 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."

7. **Responsibility for Adequacy of Design.** The Project Sponsor 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 Project Sponsor's and 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 Project Sponsor, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the Project Sponsor.

8. **Design Exception Indemnification.** Any design exception to the current version of the American Association of State Highway and Transportation Officials (AASHTO) Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the Project Sponsor agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) to 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 design exceptions for this Agreement by the Project Sponsor, the Project Sponsor's employees, or subcontractors.

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

10. **Right of Way.** The Project Sponsor agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The Project Sponsor will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The Project Sponsor agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The Project Sponsor shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way

has been acquired. The Project Sponsor further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements, and temporary easements.

(b) Right of Way Documentation. The Project Sponsor will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The Project Sponsor further agrees to acquire Right of Way in accordance with the laws and with procedures established by KDOT's Bureau of Right of Way and the Office of Chief Counsel and as required by FHWA directives for the participation of federal funds in the cost of the Project. The Project Sponsor agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The Project Sponsor will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Project Sponsor will undertake the relocation for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. §§ 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1, *et seq.* The Secretary will provide information, guidance, and oversight to the Project Sponsor for any relocations required by the Project.

(d) Non-Highway Use of Right of Way. Except as otherwise provided, 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 will require prior written approval by the Secretary.

(e) Use of Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the Project Sponsor, lying inside or outside the limits of the Project Sponsor as shown on the final Design Plans, for the purpose of constructing the Project.

11. **Removal of Encroachments.** The Project Sponsor shall initiate and proceed with diligence to remove or require the removal of all Encroachments either on or above the limits of the Right of Way within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the Project Sponsor and the owner of the Encroachment have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.

12. **Future Encroachments.** Except as provided by state and federal laws, the Project Sponsor agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and

specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than the distance permitted by the National Fire Code.

13. **Utilities.** The Project Sponsor agrees to the following with regard to Utilities:

(a) **Utility Relocation.** The Project Sponsor will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

(b) **Status of Utilities.** The Project Sponsor shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) **Time of Relocation.** The Project Sponsor will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The Project Sponsor shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the Project Sponsor as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The Project Sponsor shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the Project Sponsor's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing street surface. The Project Sponsor will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) **Permitting of Private Utilities.** The Project Sponsor shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

(e) **Indemnification.** To the extent permitted by law and the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*), the Project Sponsor will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) **Cost of Relocation.** Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private

Right of Way or easements shall be borne by the Project Sponsor except as provided by state and federal laws.

14. **Hazardous Waste.** The Project Sponsor agrees to the following with regard to Hazardous Waste:

(a) **Removal of Hazardous Waste.** The Project Sponsor shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The Project Sponsor shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The Project Sponsor will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) **Responsibility for Hazardous Waste Remediation Costs.** The Project Sponsor shall be responsible for all damages, fines or penalties, expenses, fees, claims, and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) **Hazardous Waste Indemnification.** The Project Sponsor shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the Project Sponsor in undertaking cleanup or remediation for any Hazardous Waste.

(d) **No Waiver.** By signing this Agreement the Project Sponsor has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The Project Sponsor reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

15. **Inspections.** The Project Sponsor is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the Project Sponsor or the Consultant. The Secretary does not undertake for the benefit of the Project Sponsor, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The Project Sponsor will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The Project Sponsor may require additional clothing requirements for adequate visibility of personnel.

16. **Traffic Control.** The Project Sponsor agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The Project Sponsor shall provide a temporary traffic control plan within the Design Plans, which includes the Project Sponsor 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 Project Sponsor's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the Project Sponsor's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the Project Sponsor of the determinations made pursuant to this section.

(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.** If applicable, the Project Sponsor will control parking of vehicles on the city streets throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The Project Sponsor shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

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

18. **Maintenance.** When the Project is completed and final acceptance is issued, the Project Sponsor 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 Project Sponsor will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

19. **Remittance of Estimated Share.** The Project Sponsor shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The Project Sponsor will remit its estimated share by the date indicated on the resolution form Authorization

to Award Contract, Commitment of City/County Funds received by the Project Sponsor from the Secretary. The date indicated for the Project Sponsor to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

20. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

21. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the Project Sponsor shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the Project Sponsor to any party outside of the Secretary and all costs incurred by the Project Sponsor 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.

22. **Audit.**

(a) **Audit Requirements for Federal Awards.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular"). The Audit Standards set forth in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and specifically the requirements in Subpart F, 2 C.F.R. § 200.500, *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. § 200.500, *et seq.*

(b) **Agency Audit.** The Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the Project Sponsor will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If the audit reveals payments have been made with federal funds by the Project Sponsor for items considered Non-Participating Costs, the Project Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

23. **Project Costs Prior to FHWA Approval.** The Project Sponsor agrees to be responsible for one hundred percent (100%) of any Project costs incurred by the Project Sponsor for the Project prior to the funding for the Project being authorized, obligated, and approved by the FHWA.

24. **Restricted Funding Source.** The Project Sponsor acknowledges and understands Secretary's share of the Project's total, actual, and eligible costs will be funded through federal aid. The Secretary does not assume any liability in connection with the Project. The Project Sponsor shall reimburse the Secretary for any funds approved for this Project and expended by the Secretary for which the Secretary is not reimbursed by the Federal Government.

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

ARTICLE V

SPECIAL TRANSPORTATION ENHANCEMENT REQUIREMENTS:

1. **No 4(f) Status.** It is the Parties' intention that neither this Agreement nor the Project create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. § 771.135 ("4(f) status"), except as otherwise modified by this Agreement.

(a) **Transportation Alternatives.** Unless otherwise stated below in this section, the Parties agree the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental, or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental for purposes of 49 U.S.C. § 303 and 23 C.F.R. 771.135. Exceptions: NONE.

(b) **4(f) Determinations.** The Parties agree for purposes of any future determinations of 4(f) status issues as required by 49 U.S.C. § 303 or applicable regulations the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

2. **Useful Life.**

(a) **Useful Life Period.** The Parties agree the Useful Life Period of the Project is twenty (20) years, commencing on the date the Secretary gives notice of final acceptance of the Project.

(b) **Insurance.** If the Project includes improvements to a building, the Project Sponsor will purchase and maintain insurance for property damage to the building continuously during the Useful Life Period of the Project in an amount equal to or in excess of the federal funds expended on the Project.

(c) **Change in Public Use.** After the Project is completed and during the entire Useful Life Period, any change in the public use of the real property for the Project will require written approval from the Secretary with FHWA concurrence.

(d) **Recapture of Federal Investment.**

(i) During the first ten (10) years of the Useful Life Period, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the Project Sponsor shall pay to the Secretary 100% of the federal funds invested in the Project.

(ii) Following the first ten (10) years of the Useful Life Period and until the Useful Life Period expires, if the Project is not used for the purpose set forth in this Agreement or other use approved by the Secretary and the FHWA under subparagraph (c) above, then the Project Sponsor shall pay to the Secretary as recapture of federal funds invested in the Project an amount, which will be determined according to the following formula:

$$\frac{\text{Total Amount of Federal Funds Invested in the Project}}{\text{Entire Useful Life Period for the Project}} \times \frac{\text{Number of Full Years Remaining in the Useful Life Period at the time of unauthorized change in use}}{\text{Recapture Amount}} = \text{Recapture Amount}$$

(iii) Any payments due to the Secretary pursuant to this subparagraph (d) shall be made within ninety (90) days after receipt of billing from the Secretary's Chief of Fiscal Services.

ARTICLE VI

FEDERAL REQUIREMENTS:

1. **Anti-Lobbying.** If the total value of this agreement exceeds \$100,000.00, a **Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities Attachment** will be attached and made a part of this Agreement. Such certification must state the recipient of the federal grant will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. 2 C.F.R. § Pt. 200, App. II.

2. **Debarment & Suspension.** If the total value of this Agreement exceeds \$25,000.00, this Agreement is a covered transaction for purposes of 2 C.F.R. Parts 180 and 1200. Therefore, the LPA is required to verify that neither it nor its principals or agents is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any federal department or agency. A **Certification as to Current History Regarding Debarment, Eligibility, Indictments, Convictions, or Civil Judgments** will be attached to and made a part of this Agreement. 2 C.F.R. § 200.213.

3. **Davis-Bacon Act Requirements.** As provided at 23 U.S.C. 133(i), all projects funded

with STBG funding, notwithstanding any other provision of law, shall be treated as located on a Federal-aid highway. Accordingly, 23 U.S.C 113 applies, and Davis-Bacon wage rates must be paid. In general, Davis-Bacon requires that all laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work on an award or project in excess of \$2000 funded directly by or assisted in whole or in part by funds made available under STBG shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA). For additional guidance on how to comply with DBA provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>. See also <https://www.fhwa.dot.gov/construction/cqit/dbacon.cfm>.

4. **System for Award Management.** The Project Sponsor has registered with the System for Award Management (<http://www.sam.gov>), which provides a Unique Entity Identifier (SAM). The Project Sponsor shall maintain such registration at all times during which it has active federal awards.

5. **Buy America Compliance.** The Parties agree to comply with the Buy America requirements of 23 CFR § 635.410, as applicable, when purchasing items using Federal funds under this Agreement. Buy America requires the Parties to purchase only steel and iron produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. Costs for applicable materials which are not certified either compliant or under waiver will not be reimbursed. Buy America requirements apply to all contractors/subcontractors and should be incorporated through appropriate contract provisions as needed.

6. **Prohibition on Certain Technologies.** All Parties agree that they will comply with 2 CFR § 200.216 and 2 CFR § 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds to 1) procure or obtain; 2) extend or renew a contract to procure or obtain, or; 3) or 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.

ARTICLE VII

GENERAL PROVISIONS:

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

2. **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.

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

4. **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.

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

7. **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.

8. **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.

9. **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 SEDGWICK, 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

- ☒ Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities
- ☒ Certification as to Current History Regarding Debarment, Eligibility, Indictments, Convictions, or Civil Judgments Attachment
- ☒ Civil Rights Act
- ☒ Contractual Provisions Attachment (DA-146a)

*Note – If left unchecked, then inapplicable.

**Federal Funds Lobbying Certification Attachment
Required Contract Provision**

Definitions

1. **Designated Entity:** An officer or employee of any agency, a Member of Congress or any state legislature, an officer or employee of Congress or any state legislature, or an employee of a Member of Congress or any state legislature
2. **Federal Grant:** An award of financial assistance by the Federal government (Federal Aid Highway Program is considered a grant program)
3. **Influencing (or attempt):** Making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of any Federal grant
4. **Person:** An individual, corporation, company, association, authority, firm, partnership, society, state or local government
5. **Recipient:** All contractors, subcontractors or subgrantees, at any tier, of the recipient of fund received in connection with a Federal grant.

Explanation

As of December 23, 1989, Title 31 U.S.C. (new) Section 1352 limits the use of appropriated Federal funds to influence Federal contracting. Under this new section no appropriated funds may be used by the recipient of a Federal grant to pay any person to influence or attempt to influence a designated entity in connection with the naming of a Federal grant or the extension, renewal, amendment or modification of any grant. These restrictions apply to grants in excess of \$100,000.00. Submission of this Certification is required for participation in this Project by Federal Law. For each failure to file, a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 may be imposed.

Note: If funds other than appropriated Federal funds have or will be paid to influence or attempt to influence a designated entity it must be reported. If required, the reporting shall be made on KDOT Form No. 401, "Disclosure of Lobbying Activities", in accordance with its instructions. KDOT Form No. 401 is available through the Bureau of Design.

THE ABOVE DEFINITIONS, EXPLANATION AND NOTE ARE ADOPTED AND INCORPORATED BY REFERENCE IN THIS CERTIFICATION FOR ALL PURPOSES THE SAME AS IF SET OUT IN FULL IN IT.

The maker of this Certification states that it has been signed on the maker's behalf or, if on behalf of some other person, that the maker is vested with legal right and authority to bind and obligate the other person in the making of this Certification submitted in regard to this Agreement.

The maker certifies that: No Federal appropriated funds have been paid or will be paid by or on behalf of the maker, to any person, for influencing or attempting to influence any designated person in connection with the awarding of any Federal grant or the extension, continuation, renewal, amendment or modification of any Federal grant.

In the event that the maker subcontracts work in this Agreement, the maker will provide to and require the signing of this Certification by the subcontractor, and shall keep and maintain the original signed form as part of the contract with the subcontractor.

The maker understands that this Certification is a material representation of fact upon which reliance was placed as part of this transaction.

(Date)

By: _____

CERTIFICATION BY PARTICIPANTS AS TO CURRENT HISTORY
REGARDING DEBARMENT, ELIGIBILITY, INDICTMENTS, CONVICTIONS, OR
CIVIL JUDGMENTS

By signing this certificate, the Participant certifies that neither it nor its principals (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any other position involving the administration of federal funds) is:

- (1) not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- (2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- (3) does not have a proposed debarment pending;
- (4) and has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three years.

List any exceptions here: _____

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

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

Participant/Firm's Name: _____

Address: _____

City/State/Zip: _____

Authorized Company Official's Name and Title: _____
(Typed or Printed)

Signature of Authorized Representative: _____
(Date)

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.