

AGREEMENT FOR
INDEPENDENT COST ESTIMATING SERVICES

This Agreement for Independent Cost Estimating (Agreement) is entered into between **Julie L. Lorenz, Secretary of Transportation** for the State of Kansas (Secretary), acting through the Kansas Department of Transportation (KDOT), and the consulting firm of _____(ICE) with the address of _____. The parties to this Agreement may be referred to collectively as the “Parties”.

1.0 PURPOSE OF AND AUTHORITY FOR THE AGREEMENT

1.1 KSA 68-407 authorizes the Secretary to enter into all contracts “incident to the construction, improvement, reconstruction, and maintenance of the state highway system.” KSA 68-407 and KSA 75-430a authorizes the Secretary to negotiate contacts for ancillary technical services related to construction.

1.2 The Secretary has a highway improvement project designated Project No. KA-6796-02 (Project) being procured as KDOT’s first progressive design-build project and requiring independent cost estimating, construction scheduling, and other technical services (Services). The Secretary will use a qualified firm to perform the Services needed through this Agreement. ICE Services are more fully detailed in Exhibit A, KDOT Request for Proposal for Independent Cost Estimating Services and Special Attachment No. 4, Scope of Services, attached hereto and incorporated herein.

1.3 The ICE represents that persons performing Services, including its employees and the employees of its subconsultants, if any, have the education, training, and experience necessary to perform the Services this Agreement requires in an accurate and timely manner. The ICE represents that all personnel utilized in performance of Services have appropriate qualifications and certifications to perform the Services.

1.4 The ICE Services will be negotiated and authorized through a series of Work Orders (Exhibit B) with the duration and scope of each Work Order aligning with the Progressive Design-Builder’s approved duration and scope of work in the Planning, Pre-construction and Construction Phase Amendments unless the Parties agree otherwise.

2.0 DEFINITIONS

2.1 Agreement. This Agreement for Independent Cost Estimating Services includes Articles 1.0-7.0 herein, as well as exhibits and attachments this Agreement incorporates by reference, Work Orders completed and executed by the Parties, as well as amendments thereof by CMS Change Orders and future supplemental agreements and other amendments in writing agreed to and signed by duly authorized representatives of the Parties.

2.2 Confidential Information. Confidential information means, without limitation, proprietary information; information designated confidential by disclosing party; information regarding project cost estimates; project proposal information; project development plans; and any other information that may be considered sensitive to which the receiving party has access. Confidential Information shall not include the following: (a) information that was known by the receiving party prior to its receipt hereunder, as

evidenced by written documentation; (b) is acquired by the receiving party from a third-party which has the right to disclose such Confidential Information and which is not under any obligation to maintain the same confidential; (c) is or comes into the public domain other than by violation of a confidentiality obligation; or (d) is released in response to a subpoena, court order, governmental authority requirement, or legal process, but the receiving party requested to release such information shall notify the disclosing party initially disclosing the Confidential Information of the demand for information before responding to such demand.

2.3 Contractor or Progressive Design-Builder. The individual, partnership, corporation, joint venture, or other legal entity designing and constructing the Project for KDOT in accordance with the Progressive Design-Build Contract entered into between the Contractor and Secretary.

2.4 Documents. Written, printed papers and electronic files, reports, invoices, receipts, plans, and specifications prepared as part of the Services and required to be delivered to KDOT as set forth in a Work Order.

2.5 FHWA. The Federal Highway Administration.

2.6 ICE. The firm hereinabove identified as a Party to this Agreement.

2.7 KDOT. The Kansas Department of Transportation and its authorized employees.

2.8 Notice to Proceed. A written notice from KDOT Division of Engineering and Design – Contract Section authorizing the ICE to begin performance of Services.

2.9 Project. The progressive design-build highway improvement Project for which the ICE is performing Services.

2.10 Reports. Formal documents that detail or summarize Project information analyzed, generated, or gathered by the ICE in performance of the Services.

2.11 Services. The independent cost estimating, scheduling, and associated technical services needed or required for the ICE's performance of this Agreement. Such Services are defined throughout the Agreement and with greater detail in Exhibit A, RFP, Special Attachment No. 4, Scope of Services, Work Orders, and any supplemental agreements executed for changes in Services.

3.0 SECRETARY'S GENERAL RESPONSIBILITIES

3.1 For Services for which the Secretary engages the ICE under this Agreement, the Secretary will do the following.

3.1.1 Request the ICE submit a proposal for specific Services and, when the scope, price (including fixed fee), and schedule for such Services have been agreed, such agreement shall be memorialized herein or by a Supplemental Agreement, a CMS Change Order, or a Work Order executed by duly authorized representatives of the Parties.

3.1.2 Issue a written Notice to Proceed to the ICE.

3.1.3 Furnish Project information prepared by the Secretary or in the Secretary's possession requested by the ICE and necessary for completion of the Services, if reasonably available, in a timely manner.

3.1.4 Pay the ICE according to Article 6.0.

3.2 The Secretary has the authority to review, approve, reject, eliminate, or modify some or all of the Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives are not undertaking the ICE's responsibility for its Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives make no representations, no express warranties, and no implied warranties to any persons or entities regarding the Services. The Secretary's performance under this Agreement is intended to fulfill the Secretary's obligation to take those steps necessary to construct, improve, reconstruct, and maintain the state highway system.

3.3 As this Agreement is non-exclusive, the Secretary may contract directly with other consultants to perform some or all of the Services. The Secretary may also contract directly with subconsultants that the ICE has retained to perform Services under this Agreement.

4.0 THE ICE'S GENERAL RESPONSIBILITIES

4.1 For all Services performed by the ICE, the ICE shall be responsible for the following obligations.

4.1.1 Perform or furnish Services in accordance with the Project schedule as described in Special Attachment No. 4 and in the Progressive Design-Build Contract. Furnish all labor, materials, equipment, supplies, transportation, and incidentals necessary to perform the Services. The ICE represents that it is adequately staffed and suitably equipped to perform the Services in a timely manner and in conformance with this Agreement.

4.1.2 When appropriate, prepare a Work Order (Exhibit B), when the details thereof are agreed, for the signature of the ICE's and Secretary's authorized representatives.

4.1.3 Prepare and furnish to the Secretary preliminary and final deliverables referenced in Special Attachment No. 4, Scope of Services.

4.2 The ICE shall have sole responsibility for the adequacy and accuracy of documents and Services performed by the ICE. The Secretary's performance under this Agreement is intended to fulfill the Secretary's obligation to take those steps necessary to construct, improve, reconstruct, and maintain the state highway system and is not intended to fulfill the ICE's obligations under this Agreement.

4.3 The ICE will maintain the confidentiality of all information of a sensitive nature (Confidential Information) gained during the performance or as a result of its Services under this Agreement. The ICE will also maintain security and control over all documents containing Confidential Information until returned or distributed to the Secretary. The ICE and all sub-consultants shall not divulge Confidential Information without the Secretary's consent. Any expense associated with challenging disclosure of Confidential Information shall be borne by the party challenging the disclosure.

4.4 When the ICE performs Services at a KDOT Project site, it will follow KDOT's requirements for site safety as applicable to the scope of Services as set forth in the Agreement, including complying with the safety plan of KDOT's applicable construction contractor at the site. The ICE will be responsible for training, monitoring, correcting, and reporting safety-related incidents involving ICE employees and its subconsultants and subcontractors. However, under all circumstances, KDOT's contractor will be

directing the physical work performed by its subconsultants and subcontractors and will be responsible for overall safety of the work site.

5.0 PROSECUTION AND PROGRESS

5.1 GENERAL

5.1.1 The Secretary assumes no obligation to pay for Services the ICE performs prior to KDOT's issuance of a Notice to Proceed for such Services.

5.1.2 The ICE shall perform component Services in accordance with the schedule included in Exhibit A, RFP, and Special Attachment No. 4, attached hereto, and consist with the schedule for the Progressive Design-Build Contract. The ICE shall keep informed of changes to KDOT's Project milestone dates.

5.1.3 At monthly intervals, the ICE shall report achievement of milestones and deliverables to the KDOT Project Manager and KDOT Division of Engineering and Design – Contract Section.

5.1.4 If the Secretary or a third party performs in a manner that increases the ICE's time for performance, then the ICE shall notify the KDOT Project Manager and KDOT Division of Engineering and Design – Contract Section of such delay. If the delay was not caused by the ICE, then the Secretary will either pay the ICE to accelerate the Services to overcome the delay or grant an extension of time for the delay. The Secretary has sole discretion to give a time extension rather than pay acceleration costs.

5.1.5 The ICE recognizes that Services may involve cooperating with third parties, including but not limited to the Progressive Design-Builder (and its subconsultants and subcontractors), other consultants, public utilities, private utilities, public landowners, private landowners, or others. The ICE shall perform its services in a reasonable manner and in accordance with the Parties' agreed upon schedule set forth in this Agreement and any Work Order to: (a) avoid or mitigate unavoidable delays, costs, losses, or damages which may arise out of, be caused by, or attributed to the ICE's actions or inactions in performance of Services under this Agreement and (b) effectively coordinate with KDOT so as to enable KDOT to implement the Project in a timely and cost-effective manner to the extent required under the Work Order.

5.1.6 The Secretary, the ICE, or both may request conferences to discuss the ICE's Services or other relevant Project issues. The Parties will hold these conferences virtually or in the KDOT Headquarters Office in Topeka, Kansas unless otherwise agreed.

5.1.7 The ICE's Services are considered complete upon completion of the final Work Order for the Project and the Project Manager's acceptance of the completed Services.

5.2 CONSTRUCTION CONTRACT PERFORMANCE

5.2.1 The ICE shall attend conferences and meetings as detailed in Exhibit A, RFP, and Special Attachment No. 4. The Secretary may hold such conferences/meetings to discuss the ICE's Services, the Progressive Design-Builder's performance, third party concerns, other relevant Project issues, and issues with other highway improvement projects, among other items.

5.2.2 At the Secretary's request, the ICE shall make revisions to Reports and technical data.

5.2.3 The ICE shall provide additional Services the Secretary may require for claims or litigation matters during or after Construction Contract performance.

5.2.4 Except as provided in Article 5.2.5, the Secretary will pay the ICE for additional Services the ICE provides under Articles 5.2.1 through 5.2.3 as follows:

- A. An amount that the Secretary and the ICE agree upon and memorialize in writing as an amendment signed by the duly authorized representative of each Party; or
- B. The reasonable value of the additional Services if the Parties cannot agree upon the costs for the additional Services.

5.2.5 The Secretary will not pay the ICE for any costs the ICE incurred because of the ICE's negligent acts, errors, or omissions or because of the ICE's failure to comply with its obligations under this Agreement.

5.2.6 The ICE's opinions of costs or construction costs provided as part of the Services are to be made on the basis of ICE's experience and qualifications and represent ICE's reasonable judgment as an experienced and qualified independent cost estimator, familiar with the construction industry; however, the ICE cannot and does not guarantee the Progressive Design-Builder's bid quotes or that actual construction costs will not vary from estimates prepared by the ICE.

5.3 DISPUTED MATTERS

Disputed matters arising under this Agreement will be reviewed using procedures outlined in KDOT's Consultant Standard of Care Policy, the current version attached hereto as Special Attachment No. 6. With regard to written notice referred to in Article II.B.1 of the Consultant Standard of Care Policy, KDOT will endeavor to specify whether the Problem as defined therein is based upon the ICE's alleged negligence, or the ICE's alleged failure to comply with its obligations under this Agreement, or both, it being understood and agreed that as additional information becomes available for review and analysis, the characterization of such Problem may thereafter change.

5.4 TERMINATION OF AGREEMENT

5.4.1 The Secretary may terminate this Agreement, in whole or in part, upon ten (10) days advance written notice delivered to the ICE.

- A. If the Secretary terminates this Agreement in whole or in part, for the Secretary's own convenience, then the Secretary will pay the ICE for Services incurred before the termination date as Article 6.0 provides.
- B. If the Secretary terminates this Agreement, in whole or in part, because of the ICE's failure to comply with its obligations or because of the ICE's negligent acts, errors, or omissions that the ICE fails to cure within a reasonable time after receipt of notice from KDOT, (unless a cure time would be unreasonable given the circumstances of the negligent act, error, or omission), then the Secretary will pay the ICE the reasonable value of Services performed to the termination date. In evaluating the reasonable value of Services performed, KDOT may adjust the fixed fee to reflect the percentage of Services the ICE has completed.

5.4.2 The ICE may terminate this Agreement upon ten (10) days advance written notice delivered to KDOT. The ICE shall send the notice to KDOT Division of Engineering and Design – Contract Section.

5.4.3 The Secretary or the ICE may or may not claim the other Party breached the contract when exercising their right to terminate this Agreement. Termination, in any case, does not prevent the Secretary from recovering damages for the ICE's failure to comply with its obligations under this Agreement or for the ICE's negligent acts, errors, or omissions that the ICE fails to cure or prevent the ICE from seeking payment for additional Services under Article 5.2.4.

5.4.4 Regardless of which Party terminates this Agreement, the Secretary may require the ICE to complete some of the remaining Services. The ICE's obligations to perform shall not end until such Services are completed.

5.4.5 The Secretary is not obligated to terminate this Agreement as a condition precedent to contracting with "other consultants" as described and permitted in Article 3.3. The ICE shall have no breach of contract claim, interference with contract claim, or other claim if the Secretary contracts with "other consultants" as defined and permitted in Article 3.3.

6.0 PAYMENT

6.1 GENERAL

6.1.1 The Secretary will compensate the ICE for Services on each Work Order on the basis of the ICE's actual cost plus a negotiated fixed fee, subject to an upper limit of compensation.

Subject to the upper limit of compensation (Article 6.1.5) and disallowed costs (Article 6.1.8), the Secretary will pay the ICE:

- A. Actual, direct costs incurred in performing the Services such as employee labor (including fringe benefits and overtime (Article 6.1.2)), contract labor, approved subcontractor/subconsultant costs, equipment costs, transportation costs, in-state or approved out-of-state lodging costs, and meal expenses associated with overnight travel (Special Attachment No. 4A);
- B. Associated overhead (Article 6.1.3); and
- C. The fixed fee negotiated between the Parties and identified for the Services in the Work Order.

The Secretary prefers the cost-plus fixed fee method; however, at the ICE's request, the Secretary may compensate the ICE for Services on each Work Order using a specific rates of compensation method, subject to an upper limit of compensation and disallowed costs, as provided in Article 6.1.12.

6.1.2 The ICE shall furnish to the KDOT Division of Engineering and Design – Contract Section, for the Secretary's approval, a written request to incur overtime charges before incurring those charges. The Secretary shall not compensate for overtime if the ICE failed to furnish this notice and obtain the Secretary's prior approval. If approved, then the Secretary will pay as agreed upon either straight-time overtime or premium overtime at 1.5 times the approved hourly rate for the employee performing the overtime.

6.1.3 The ICE shall submit its current indirect (overhead) cost rate as soon as possible but in no event later than six (6) months after the ICE's fiscal year ends. The ICE's indirect (overhead) cost rate shall comply with Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*) and meet the Uniform Guidance (2 CFR Part 200). The Secretary may audit the ICE's overhead rates yearly. The Secretary may require the ICE to provide certified financial statements or other

documents substantiating the ICE's overhead rates. If the overhead rate increases or decreases, then the Secretary may adjust previous payments to reflect the actual overhead rate for the relevant fiscal year.

6.1.4 Subject to the upper limit of compensation (Articles 6.1.1 and 6.1.5), the Secretary will pay for additional Services according to Article 6.2.

6.1.5 Initially, the Parties shall identify the upper limit of compensation for the Services. The Parties may thereafter adjust the upper limit of compensation through a CMS Change Order or Supplemental Agreement. The ICE shall notify the KDOT Division of Engineering and Design – Contract Section before the ICE's Services exceed the upper limit of compensation so the Parties may consider an adjustment. The Secretary has no obligation to pay costs that exceed the upper limit of compensation unless and until any adjustment thereof is agreed in writing between the Parties.

6.1.6 To initiate payment for Services, the ICE shall complete and submit to the KDOT Division of Engineering and Design – Contract Section an itemized billing on KDOT's Payment Request Form or other document the Division approves. The ICE shall not submit a billing more frequently than once a month or for less than \$500.00. For each billing cycle the ICE shall:

- A. Submit payroll documentation identifying all tasks and employees that worked on such tasks for the Project during that billing period, all hours each of these employees worked, the rate of pay for each of these employees, and all monies paid to each of these employees;
- B. Show the indirect (overhead) cost rate applied;
- C. Itemize the other actual direct costs incurred by the ICE in performance of Services (Special Attachment No. 4A) and provide adequate supporting documentation therefor; and
- D. Calculate and claim a proportional amount of fixed fee, unless billing is final.

In cases where the ICE submits billings that include costs incurred by a subconsultant, the same requirements of subparagraphs A. through D. above shall apply.

6.1.7 The Secretary will pay for the Services within 30 days after receiving, reviewing, and generally approving the ICE's itemized billing and accompanying documentation that Article 6.1.6 and Special Attachment No. 4A requires. This approval does not prevent the Secretary from adjusting a previous payment(s) for disallowed costs (Article 6.1.8) discovered after the Secretary has made that payment.

6.1.8 The ICE shall incur and invoice its costs in conformity with generally accepted accounting principles and the cost principles established in the Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). The Secretary will not pay for disallowed costs. Disallowed costs include costs the Secretary determines are unreasonable, not actually incurred, caused by the ICE's failure to comply with its obligations under this Agreement, caused by the ICE's negligent acts, errors, or omissions, or otherwise unallowable. The ICE shall reimburse the Secretary if the Secretary previously paid any disallowed costs.

6.1.9 For Services performed, accumulated partial payments shall not exceed ninety-five percent (95%) of the upper limit of compensation.

6.1.10 The ICE shall submit its final invoice for final payment following completion of Services, but no later than one hundred eighty (180) days from completion of Services. The ICE shall clearly designate

and label such invoice as “final” so as to enable KDOT to proceed to close out in accordance with its own internal procedures.

6.1.11 The Secretary will make final payment within ninety (90) days after the Secretary or the Secretary’s representative completes a final audit of the Project. (See Article 7.2).

6.1.12 Specific Rates of Compensation. Instead of cost-plus fixed fee compensation, ICE can propose payment using the specific rates of compensation payment method for performance of Services under a Work Order. Subject to the upper limit of compensation, disallowed costs, and sums withheld for liquidated damages (if any), the Secretary will pay the ICE: (a) the loaded fixed hourly rate (using audited overhead and negotiated profit) multiplied by the actual hours such employee performed Services; and (b) other actual direct costs incurred by ICE, such as equipment costs, transportation costs, subconsultants, lodging costs, and meal expenses (Special Attachment No. 4A). Subject to the provisions of this Agreement, the specific rates of compensation established by the Work Order as finalized and agreed between the Parties will be firm and not change during performance of such Work Order and must comply with generally accepted accounting principles and the cost principles established in the Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*).

6.2 CHANGE IN SERVICES

6.2.1 The KDOT Project Manager or Division of Engineering and Design – Contract Section may change the ICE’s Services by increasing, decreasing, or otherwise modifying the Services this Agreement requires.

6.2.2 The ICE may request payment for increased or modified Services as “extra Services.” If the Secretary determines the “extra Services” are reasonable and necessary, then the Secretary may authorize payment for actual labor, associated overhead, and other direct expenses for these “extra Services” and increase the upper limit of compensation if necessary to compensate for the “extra Services.” Alternatively, the Secretary may authorize payment of unit prices or lump sum amounts to compensate for the “extra Services.” However, the Secretary will only increase the ICE’s fixed fee if the ICE demonstrates that the “extra Services” substantially increase the original amount of Services. Such increases may include increasing the Construction Contract scope, or changing the duration of Services, among others.

6.2.3 If the KDOT Division of Engineering and Design – Contract Section decreases the Services or decreases the expected duration of Services, then the ICE shall have no claim for additional compensation. Such decreases may include changing the duration of Services, among others.

6.2.4 The KDOT Division of Engineering and Design – Contract Section will prepare a CMS Change Order or Supplemental Agreement setting forth the agreed-upon change in compensation.

7.0 ADDITIONAL PROVISIONS

7.1 OWNERSHIP OF DOCUMENTS

7.1.1 Upon completion or termination of Services for the Project, the ICE shall furnish to KDOT all Documents KDOT provided to the ICE that the ICE does not need for subsequent Services.

7.1.2 Upon completion or termination of Services for which the Secretary retains the ICE, the ICE shall furnish to KDOT all original Documents the ICE compiled and prepared in performing its Services.

- A. Any work products developed by the ICE as deliverables to KDOT as part of the Services performed and paid for under this Agreement shall become the property of KDOT, but the ICE shall have the right to retain copies thereof for its own internal recordkeeping and for the purposes of performing Services for the Project.
- B. With regard to software and systems used in the performance of Services but which are (1) neither developed under this Agreement nor originally obtained from or through KDOT and (2) proprietary to the ICE, its subconsultants or third parties, the ICE (or such designated subconsultant or third party, as the case may be) retains ownership rights to such proprietary software or systems. IF KDOT employees need access to such software or systems, the ICE shall grant to or obtain for KDOT a non-exclusive, royalty-free license for KDOT to use such software and systems for the Project and the construction and maintenance of, as well as future improvements to, the Project.
- C. Upon completion or termination of Services for the Project and at the Secretary's request, the ICE shall furnish to the KDOT copies of all correspondence, memoranda, instructions, receipts, invoices, e-mails between Contractor, PMC, KDOT and/or ICE, and any other Documents pertaining to the Project. These Documents are KDOT's property.

7.1.3 Any or all Services performed under this Agreement may result in the ICE using Documents (such as reports, surveys, schedules, lists, or data) the Secretary's authorized representatives prepared, compiled, or collected that are use restricted pursuant to 23 U.S.C. § 409. Such Documents are watermarked "Use Restricted 23 U.S.C. § 409," providing the Secretary with an evidentiary privilege that only counsel for KDOT may assert in litigation against KDOT. The ICE shall use these watermarked Documents only to perform Services on the Project. The ICE shall not remove or otherwise damage the 23 U.S.C. § 409 watermark. The requirements of this paragraph shall be included by the ICE in its subconsultant agreements, if any, for the performance of any Services.

7.1.4 Use of Work Product. The final work product of the ICE's Services furnished to KDOT as a deliverable under this Agreement shall be solely for KDOT's use for the Project, unless such final work product is intended to be used on multiple projects. If KDOT subsequently alters or changes the final work product of the ICE for another purpose or use for a different project, then KDOT, not the ICE, assumes responsibility for any such changed or altered work product.

7.2 ACCESS TO RECORDS; AUDITS

7.2.1 The ICE shall keep all Project Documents arising out of or related to performance of Services for a five-year retention period beginning with the ICE's final payment date. The final payment date is the voucher date on the Secretary's last payment to the ICE under this Agreement. This final payment occurs after the ICE submits its request for final payment and KDOT has completed the final audit. The ICE shall make all Documents available at the ICE's principal office.

7.2.2 The Secretary, FHWA, and their authorized representatives may inspect and review all Documents pertaining to the ICE's Services during the ICE's performance and the five-year retention period.

7.2.3 The ICE shall maintain all cost documentation according to generally accepted accounting principles and the cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*).

7.2.4 Within three (3) years after the ICE has submitted its invoice for final payment, the Secretary or the Secretary's authorized representatives may perform a final audit of the ICE's Project costs conducted

according to generally accepted governmental auditing standards and in compliance with cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). Without limitation, the auditors may determine whether costs incurred were actual and necessary, reasonable, allowable, and in compliance with regulations and whether the compensation did not exceed the applicable upper limit of compensation. The auditors may review all subconsultant records and costs as well. The ICE shall reimburse the Secretary for overpayments.

7.2.5 The ICE shall include the provisions of Article 7.0 in all subconsultant agreements.

7.3 AGREEMENT ITEMS

7.3.1 This Agreement includes the items referenced in Article 2.1.

7.3.2 Exhibits, Attachments, and Order of Precedence. The Exhibits and Attachments identified below are essential parts of and incorporated into this Agreement.

A. If there is a conflict among or between the various terms set forth or referenced in the documents comprising the Agreement, then the order of precedence shall be: (1) Special Attachment 1A; (2) Articles 1.0 through 7.0 of the Agreement; and (3) Exhibits and other Attachments. If either Party discovers a conflict or inconsistency among or between the various provisions comprising this Agreement (including provisions in documents referenced or incorporated by reference into this Agreement), then such Party shall notify the other Party and the Parties shall thereafter cooperate with each other to resolve the conflict or inconsistency in an equitable manner in conformance with the purpose and intent of this Agreement.

B. The Exhibits and Attachments are:

- Exhibit A, Notice to Consulting Firms—RFP for ICE Services KA 6535-02
- Exhibit B, Work Order Form
- Special Attachment No. 1, US DOT Standard Title VI Assurances
- Special Attachment No. 1A, Contractual Provisions Attachment (DA 146a)
- Special Attachment No. 2, Certification Regarding Lobbying
(to be completed and signed by the ICE).
- Special Attachment No. 3, Verification as to History and Current Status Regarding Eligibility
(to be completed and signed by the ICE).
- Special Attachment No. 3A, Contractual Services with Current Legislator or Legislator’s Firm
(to be completed and signed by the ICE).
- Special Attachment No. 4, Scope of Services
- Special Attachment No. 4A, ICE Reimbursement for Actual Direct Costs (Travel, etc.)
- Special Attachment No. 5, Electronic Data Interchange
- Special Attachment No. 6, KDOT Consultant Standard of Care Policy, signed 1/31/14
- Special Attachment No. 7, Certification (for Final Indirect (Overhead) Cost Rate)
(to be completed and signed by the ICE).
- Special Attachment No. 8, Tax Clearance Certificate
(to be obtained and submitted by ICE and subconsultants)

- Special Attachment No. 9, Not Used
- Special Attachment No. 10, Policy Regarding Sexual Harassment
(to be completed and signed by ICE)
- Special Attachment No. 11, Certification – Boycott of Israel Prohibited
- Special Attachment No. 12, Confidentiality and Conflict of Interest Agreement ICE Services
(to be completed and signed by ICE employees and subconsultant employees)

7.3.3 No Party may alter or amend this Agreement except by a CMS Change Order or Supplemental Agreement evidencing written agreement between the Parties for such alteration or amendment.

7.4 LEGAL RELATIONS

7.4.1 The ICE shall observe and comply with all applicable federal, state, and local laws, ordinances, and regulations.

7.4.2 This Agreement binds the Parties and the Parties' successors and permitted assigns. The ICE shall not assign this Agreement without the prior written approval of the Secretary.

7.4.3 This Agreement creates no third party beneficiaries.

7.4.4 Kansas law governs this Agreement.

7.4.5 Subcontracts and Assignments.

- A. The ICE shall not assign this Agreement, in whole or in part, without the prior written consent of the Secretary. The ICE may subcontract portions of the Services to duly qualified subconsultants; provided, however, any such subcontract shall not relieve, and shall not be construed to relieve, the ICE from any obligation to perform or furnish all Services in accordance with the requirements of this Agreement.
- B. The ICE shall, in its contract with any subconsultant, require each such subconsultant to comply with applicable provisions of this Agreement.

7.4.6 Sexual Harassment. Consultant acknowledges it has read the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Kansas Executive Order 18-04 and attached hereto as Special Attachment Number 10 and agrees to comply with the provisions of this policy.

7.4.7 Boycott of Israel. Consultant certifies that it is not currently engaged in a boycott of Israel as set forth in KSA 75-3740e and 75-3740f.

7.5 WORKERS' COMPENSATION AND OTHER EMPLOYEES PROVISIONS

The ICE shall pay unemployment insurance, workers' compensation, social security taxes, and other taxes or payroll deductions state and federal law require for the ICE's employees who are performing Services under this Agreement.

7.6 ERRORS AND OMISSIONS; INDEMNIFICATION; INSURANCE

7.6.1 The ICE shall promptly correct, without additional compensation, the ICE's failure to perform its obligations under this Agreement. The ICE shall promptly correct its negligent acts, errors, or omissions without additional compensation. If the Services affect a third party, then the ICE shall perform corrections in a manner that minimizes delay to the third party and other damages.

7.6.2 The ICE shall pay for or reimburse the Secretary for damages and costs the Secretary has incurred or will incur, because the ICE failed to comply with its obligations under this Agreement. These damages include personal injury to KDOT employees, damage to KDOT property, and economic loss whether the economic loss arises in contract, tort, or equity. Economic loss encompasses direct and consequential damages Kansas law permits the Secretary to recover, including monies the Secretary pays or owes to construction contractors, monies the Secretary pays or owes to consulting firms, delay damages, or other damages arising from the ICE's failure to comply with its obligations. This Agreement does not authorize third parties to seek recovery as third party beneficiaries of this Agreement or in any other capacity.

7.6.3 The ICE shall pay for or reimburse the Secretary for damages and costs the Secretary has incurred or will incur, because of the ICE's negligent acts, errors, or omissions arising out of or in connection with ICE's performance of this Agreement. These damages include personal injury to KDOT employees, damage to KDOT property, and economic loss whether the economic loss arises in contract, tort, or equity. Economic loss encompasses direct and consequential damages Kansas law permits the Secretary to recover, including monies the Secretary pays or owes to construction contractors, monies the Secretary pays or owes to consulting firms, delay damages, or other damages arising from the ICE's negligent acts, errors, or omissions. This Agreement does not authorize third parties to seek recovery as third party beneficiaries of this Agreement or in any other capacity.

7.6.4 The ICE shall hold the Secretary and the Secretary's authorized representatives harmless from and indemnify these persons for all claims, suits, damages (whether property damages, personal injury damages, or economic damages), and costs (reasonable attorney's fees and defense costs) resulting from the ICE's failure to comply with its obligations under this Agreement, resulting from the ICE's negligent acts, errors, or omissions in performing its Services, or all of the above. The ICE shall have no obligation to hold the Secretary or the Secretary's authorized representatives harmless from and indemnify these persons for the Secretary's or the Secretary's representatives' own negligence.

7.6.5 For the life of this Agreement, the ICE shall maintain professional liability insurance to cover the ICE's performance of Services. If it becomes apparent that the coverage maintained is inadequate, then the Secretary reserves the right to require the ICE to increase the scope of coverage, the amount of coverage, or both, to the extent commercially reasonable and available. The ICE shall require subconsultants and other ICE-retained personnel or agents to carry professional liability insurance as well if such insurance is available.

7.6.6 Nothing in Article 7.6 shall be construed to mean the ICE is waiving any rights or defenses the ICE has under Kansas law or waiving any rights or obligations the ICE has under the KDOT Consultant Standard of Care Policy, Special Attachment No. 6 to this Agreement. Notwithstanding any other provision of this Agreement, the Secretary reserves any and all rights under law or equity available to the Secretary, KDOT, and the State of Kansas.

7.7 CONFLICT OF INTEREST

7.7.1 The ICE warrants that the ICE and the ICE’s employees have no interest and will not acquire any interest, directly or indirectly, which conflicts with the performance of Services under this Agreement. Conflict of interest includes, but is not limited to, any interest which might: (a) impair or compromise the exercise of truthful, objective or impartial independent professional judgment; (b) influence or interfere with the proper performance of duties for the sole benefit and in the best interest of the Secretary and KDOT; (c) otherwise bias or affect advice given or the quality of Services rendered; or (d) any other interest considered a conflict under applicable state or federal law, rule or regulation. In the event the ICE or any of its employees becomes aware of an actual or apparent conflict of interests (whether such conflict of interest involves the ICE, an employee of the ICE or a subconsultant, or any other party), then the ICE shall notify KDOT immediately.

7.7.2 On any Project for which the ICE is engaged to perform Services by the Secretary, the ICE shall perform no design, engineering, or associated technical services for an entity other than KDOT.

7.7.3 The ICE shall not hire persons in KDOT’s employment to provide Services under this Agreement without the Secretary’s prior written permission.

7.7.4 All ICE employees and subconsultant employees working on the Project shall complete and submit a Confidentiality and Conflict of Interest Agreement, Special Attachment No. 12.

7.8 EFFECTIVE DATE; REPRESENTATION OF AUTHORITY

7.8.1 This Agreement shall become effective on the date when both Parties have signed the Agreement. It is intended that the ICE shall sign first, and the Secretary (or the Secretary’s designated representative) shall sign last; therefore, the effective date of the Agreement shall be the latter date.

7.8.2 In signing this Agreement, the Parties and the individual person signing on behalf of such Party represent that the person signing is duly authorized, having the authority and capacity to execute and legally bind the respective entity to this Agreement.

Now therefore, the Parties hereto cause their duly authorized representatives to enter into this Agreement.

ICE _____

Julie L. Lorenz

XXXXXXXX

Secretary of Transportation

Kansas Department of Transportation

By: _____

By: _____

(Signature) (Date)

(Signature) (Date)

Name: _____

Burt Morey, PE

(printed)

Deputy Secretary and

Title: _____

State Transportation Engineer