

**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 contracts for ancillary technical services related to construction.

1.2 The Secretary has a highway improvement project designated Project No. 54-106 KA 6535-03 (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

XXXXXXX

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

**KANSAS DEPARTMENT OF TRANSPORTATION  
REQUEST FOR PROPOSAL  
for  
INDEPENDENT COST ESTIMATING SERVICES  
KA-6535-02 – US-54/US-400 Sedgwick and Butler Counties Project**

**Notice to Consulting Firms**

The Kansas Department of Transportation (KDOT) is seeking a qualified consulting firm or team of firms to perform Independent Cost Estimating (ICE) professional services for the project described below. Interested consultants must email a proposal to [eastkellogg@ksdotike.org](mailto:eastkellogg@ksdotike.org) by 12:00 p.m. Central Time on October 20, 2022 to be considered for selection.

All firms doing business with KDOT must be registered and in good standing under the laws of the State of Kansas at the time of contracting and must comply with applicable state and federal laws, rules and regulations.

**Project Description**

**Table 1: Background and Scope of Project**

Project Number	Background and Scope of Project
KA-6535-02	<p>The US-54/US-400 – Sedgwick and Butler Counties project has received approval to move forward as Kansas’ first progressive design-build (PDB) project. The project will follow the existing alignment of US-54/US-400 from the intersection of K-96 to just east of the North 159<sup>th</sup> St. E. intersection and expand the existing facility to become a controlled-access freeway facility with additional travel lanes, frontage roads, and a reconfigured K-96 interchange. The project will also improve access from US-54/US-400 to K-96 by reconstructing and reconfiguring the interchange. Ancillary improvements will also be incorporated within the project limits. The estimated construction budget is \$225 million.</p> <p>For additional information regarding this construction project, including the Instructions to Proposers and the form of PDB Contract for the Progressive Design-Build procurement, see the project website:</p> <ul style="list-style-type: none"> <li>• <a href="https://eastkellogg.ksdotike.org/">https://eastkellogg.ksdotike.org/</a></li> </ul>
General Project Delivery Method Description	<p>PDB is an alternative delivery procurement method that uses a qualifications-based or best value selection to select a progressive design-builder. Following selection of a progressive design-builder, KDOT will work collaboratively with the progressive design-builder during the PDB Planning Phase and/or Pre-construction Phase to progressively advance and refine the project design and construction price using a cost model prepared by the progressive design-builder. The cost model will include:</p> <ul style="list-style-type: none"> <li>• Quantity take-offs.</li> <li>• Material costs, subcontracted work costs, equipment rates, burdened hourly labor rates, crew sizes, shifts/hours per day, and production rates.</li> <li>• Risk assumptions, assignment of risks and schedule and cost contingencies associated with each risk.</li> </ul>

	<ul style="list-style-type: none"> <li>Costs to mobilize equipment and materials to construct the work and other facility related costs necessary for the proper execution of the work.</li> <li>Copies of quotations from subcontractors and suppliers.</li> <li>Field indirect costs, bonds, taxes, and insurance.</li> </ul> <p>At the Preliminary Design Submittal (approximately 30% design complete) for each Work Package, the progressive design-builder will use the cost model to prepare an opinion of probable construction cost (OPCC). Once the OPCC estimate is within the acceptable percentage range (as determined by KDOT), the progressive design-builder will further advance design to a level (typically 60-75%) that allows development of a guaranteed maximum price (GMP) considerate of project risks and risk allocation in accordance with the risk register for each Work Package. The GMP is anticipated to be submitted prior to completion of final design of the project.</p>
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#### Anticipated Consultant Scope

KDOT anticipates the following activities to be included in the ICE consultant's scope:

- Participate in, maintain notes, and document action items and decisions made for team meetings as described in Table 2.

**Table 2: Meetings**

Meeting	Description	Setting & Estimated Frequency
Planning Phase Kickoff Meeting	Initial kickoff meeting to develop a common understanding of purpose, assumptions, and outcomes for the Project.	In-person meeting One occurrence
Project Status Meeting	Project status meetings shall address general status of the Work in detail, progress made, forthcoming Work planned, and all issues with potential to cause delays or problems and their estimated effect on the Project Schedule.	Virtual meeting Weekly
Risk Management and Project Schedule Meetings	Meetings focused on Project Schedule status and consolidating identified risks from other meetings and incorporating this information into the Risk Register.	Virtual meeting Monthly
Executive Team Meetings	Leadership meeting to address status of the work and major risks with potential to cause delays or problems and their estimated effect on the Project Schedule.	In-person meeting Quarterly
Price Reconciliation Meetings	Meetings among the ICE, progressive design-builder, and KDOT to reconcile pricing in the OPCCs and Work Package GMPs.	In-person meeting Up to 8 occurrences
As-requested meetings	ICE shall plan to attend up to two additional meetings per month to discuss project-related issues when requested by KDOT.	Virtual meeting Monthly

- Develop a thorough understanding of the project and the project goals.
- Provide assistance to KDOT with respect to determining cost impacts of the following: project phasing, labor availability, mobilization and site access, sequence of design and construction, and availability and procurement of equipment and materials.
- Identify methods and solutions for KDOT and progressive design-builder to consider that may

facilitate execution of the work more efficiently (e.g., innovation, means and methods, equipment, material costs, and risk assignment).

- Prepare and maintain a resource loaded critical path method (CPM) project schedule for the overall Project and each Work Package to support development of an accurate estimate(s) of construction cost, confirm production considerations, and assess constructability issues related to the Project.
- Provide input on risk management activities and status of items on the risk register, including identifying, assessing, mitigating, and allocating risks.
- Provide cost estimate support for the evaluation of proposed concepts using contractor style (production-based) methodologies and production-based heavy civil estimating software platforms, including:
  - Prepare an overall estimate for the cost of Work for the entire project in consideration of the progressive design-builder's Work Packaging Plan.
  - Prepare and submit an independent cost estimate at the Preliminary Design Submittal (approximately 30% design complete), to validate the progressive design-builder's OPCC for each Work Package. Note that the Project may be comprised of multiple Work Packages (up to twelve Work Packages should be assumed).
  - Prepare and submit an independent cost estimate for each of the Work Package GMP (up to twelve Work Packages should be assumed).
  - Conduct price reconciliation meetings with KDOT and the progressive design-builder to identify areas of substantive divergence (as identified by KDOT) between ICE and progressive design-builder's OPCC and Work Package estimates.
  - Reconcile substantive divergences for each of the identified items to bring the OPCC and Work Package GMP into the acceptable percentage range.
  - Provide summary and detailed cost breakdowns.
  - Share, review, and discuss assumptions, quantities, contingencies, and other items that affect the price of the project.

#### **Qualifications**

The ICE consultant must have construction, open-book pricing, and alternative project delivery experience. Key Personnel for the project shall include the following: Project Manager, Cost Estimator, and Scheduler.

Preference will be given to proposed Key Personnel with the following qualifications and experience:

- **Project Manager**
  - Ten or more years of experience in management and oversight of heavy civil construction projects and construction cost estimating with knowledge of construction and current market conditions.
  - Strong presentation skills with experience leading meetings and discussions with multi-disciplinary teams on major infrastructure projects.
  - Proficient in written communication with experience developing technical reports and memos related to independent cost estimating.
  - Experience making decisions regarding risk management and other project issues that may affect pricing.
- **Cost Estimator**
  - Proficiency in production-based, heavy civil estimation software platforms.
  - Experience performing contractor-style, production-based cost estimates for projects of



- similar scope, size, and complexity to the project.
  - Reviewing project plans and specifications and offering ideas for innovation that align with the Project goals.
  - Ten or more years of recent and relevant estimating experience in heavy civil construction, specifically roadway, bridge, and underground utility construction, along with knowledge of construction means, methods, and equipment in these areas.
  - Experience identifying, assessing, and pricing risk.
  - Experience working for a construction contractor estimating and/or managing construction projects that are similar to the project.
- Scheduler
    - Experience developing resource loaded construction CPM schedules for projects of similar scope, size, and complexity to the project.
    - The ability to review the progressive design-builder's construction schedule and provide written analysis and recommendations to improve its usefulness to the Project Team.
    - Ten or more years of recent and relevant scheduling experience in all trades of heavy civil and transportation, along with knowledge of construction means, methods, and equipment in these areas.
    - Demonstrated proficiency in critical path scheduling (Primavera P6 or KDOT approved alternative) and analysis on at least three construction projects.

#### Anticipated Schedule and Key Dates

1. Proposals are due by or before 12:00 PM CST on October 20, 2022.
2. The program fiscal year for this project is FY 2023 (July 2022 – June 2023).
3. Anticipated execution of the ICE contract – December 2022
4. Other important dates:
  - a. Anticipated execution of PDB contract with progressive design-builder – November 2022
  - b. NEPA decision – January 2023
  - c. Early work packages authorization – as early as 2<sup>nd</sup> Quarter of 2023
  - d. All Work Package GMPs authorized – 4<sup>th</sup> Quarter of 2023
  - e. Substantial completion – December 2025

#### Instructions for Proposal

1. No cost or pricing information shall be submitted with the proposal. Proposals including cost or pricing information will be considered non-responsive and withdrawn from further consideration.
2. The consultant's proposal must not exceed **14 pages total** (excluding required forms and attachments). All pages shall be 8.5" x 11" in size. Font size shall not be less than 11 point, excluding the organization chart which must not be less than 10 point.
3. A PDF (2MB maximum size) of the proposal must be emailed to [eastkellogg@ksdotike.org](mailto:eastkellogg@ksdotike.org) by the proposal due date and time.
4. The subject line of the email and the PDF file name must read: **"KA-6535-02 – ICE\_Services\_[FIRM NAME]"**.
5. The proposal must be accompanied by Special Attachments No. 8 ("Tax Clearance Certificate") and No. 10 ("Policy Regarding Sexual Harassment"). If you need a Tax Clearance Certificate, you can request one here: [Kansas Department of Revenue – Tax Clearance Request Information \(ksrevenue.org\)](https://ksrevenue.org). Allow 2-3 business days for processing.
6. The outline in Table 3 below describes the expected proposal organization and content sections.
7. Table 4 lists the evaluation factors and associated weights which will be used to make a selection.

**Table 3: Proposal Content**

Section	Description of Intent	Max # of Pages
Cover Letter	Cover letter conveying your interest in providing ICE services.	14 Pages
Delivery Method Understanding	Demonstrate your firm's understanding of the PDB delivery method and how your firm will work with KDOT to ensure a successful project.	
Project Approach	Provide an organizational chart to demonstrate reporting and communication among the proposed staff, including key personnel, that will provide the required services. Demonstrate anticipated communication between KDOT, the ICE, and the Progressive Design-Build within the organizational chart.  Describe your approach to accomplish the services described in the anticipated consultant scope in an efficient manner and to a high standard. Include cost-effective and optimized solutions to address the Project. Include qualifications or experience related to the Project approach.	
Firm Qualifications and Experience	Describe the firm's past experiences with respect to ability to create accurate, high quality project schedules and independent cost estimates. Include three client references and reference contact information (phone and email).	
Project Staff Qualifications and Experience	Identify the key personnel for this project (Project Manager, Cost Estimator, and Scheduler) and provide a resume for each detailing their experience with regard to their position on the team. Resumes shall not exceed two pages for each key personnel position. Include names, office location, qualifications, education, training, expertise, and other relevant information. Include three references and reference contact information (phone and email) for each of the key personnel.	

**Table 4: Evaluation Factors**

Evaluation Factor	Weight
Delivery Method Understanding	10%
Project Approach	20%
Firm Qualifications and Experience	25%
Project Staff Qualifications and Experience	25%
Interview	20%

#### Interviews

Interviews will be held with each firm. Interviews are anticipated to occur during the week of October 31 to November 4, 2022. The purpose of the interview is to allow proposers to present their analysis of the Project, to allow the panel time to clarify the consultant's qualifications in a question-and-answer session, and to allow the Department to assess the consultant's understanding of the services and the PDB delivery method.

#### **Contract Terms and Conditions**

- A standard KDOT agreement for technical services will be used for the project. The form of the Agreement or a link to the form of Agreement will be posted to the following website:  
<https://eastkellogg.ksdotike.org/procurement-details/>.
- The following special attachments will need to be provided by the selected consultant and all subconsultants with the signed work order following negotiations and will become attachments to the contract.
  - Special Attachment No. 8 ("Tax Clearance Certificate")
  - Special Attachment No. 10 ("Policy Regarding Sexual Harassment")
- Proposers must complete a Conflict of Interest Disclosure Form and include the completed form in their Proposal which discloses any relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFP. Members of KDOT's project management team (Garver, Ballard Spahr LLP, and Burns & McDonnell) and members of firms that are on a Proposer team for the US-54/US-400 Sedgwick and Butler Counties Project (KA-6535-03) may not participate on the ICE consultant's team. The Conflict of Interest Disclosure Form or a link to the form will be posted to the following website:  
<https://eastkellogg.ksdotike.org/procurement-details/>.
- This RFP does not obligate KDOT to award a contract or complete the project, and KDOT reserves the right to cancel the RFP if it is in its best interest. KDOT also reserves the right to accept or reject any or all Proposals submitted in response to this solicitation.
- Any Proposal received after the due date specified above will be considered late and will be rejected.
- Once the selection to this solicitation is announced, proposers may request a formal debrief from KDOT with regard to its selection.
- Proposals and their content will become the property of KDOT. All Proposals will be treated as non-public records until the Contract has been executed by all parties.

#### **Questions**

All questions regarding this RFP shall be emailed to [eastkellogg@ksdotike.org](mailto:eastkellogg@ksdotike.org). Questions can be submitted until October 6, 2022. Responses or a link to responses will be posted on or before October 13, 2022 to the following website:

<https://eastkellogg.ksdotike.org/procurement-details/>

# WORK ORDER

## Actual Cost

CMS Contract No. \_\_\_\_\_

KDOT Project No. \_\_\_\_\_

Phase: \_\_\_\_\_

Firm Name \_\_\_\_\_

Project Location: \_\_\_\_\_

SCOPE OF SERVICES and DELIVERABLES: (Attach or provide narrative description of technical services e.g., problem, investigation, or analysis to be completed)

**Estimate of Cost:****Direct Salary**

<u>Classification</u>	<u>Hourly Rate</u>	<u>Estimated Hours</u>	<u>Total Cost</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Subtotal = \$ \_\_\_\_\_

Overhead \_\_\_\_\_ %

\$ \_\_\_\_\_

Subtotal = \$ \_\_\_\_\_

**Fixed Fee**

\$ \_\_\_\_\_

**Direct Expense**

Subtotal = \$ \_\_\_\_\_

Total Direct Expense = \$ \_\_\_\_\_

Upper Limit of Compensation/Total: \_\_\_\_\_

Consultant

 Secretary of Transportation, KDOT  
 Kansas Department of Transportation
\_\_\_\_\_  
(Firm Name)
 By: \_\_\_\_\_  
 Project Manager (Date)

 By: \_\_\_\_\_  
 Project Manager (Date)

**U.S. DOT Standard Title VI Assurances and Non-Discrimination Provisions**

[Reference: US DOT Order 1050.2A; 23 CFR 172.9(c)(1)(vi)]

During performance of this Agreement, Consultant, for itself, its assigns and successors in interest, agrees as follows:

**1. Compliance with Regulations.** The Consultant will comply with the acts and regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

**2. Non-Discrimination.** The Consultant, with regard to Services performed by it during the performance of this Agreement, will not discriminate on the grounds of race, color or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment, if any. The Consultant will not participate directly or indirectly in the discrimination prohibited by the acts and regulations, including those set forth on page 2 of 2 of this Special Attachment No. 1 and including employment practices when the Agreement covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.

**3. Solicitations for Subconsultants, including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding or negotiation, made by the Consultant for services to be performed under a subcontract, each potential subconsultant will be notified by the Consultant of the Consultant's obligations under this Agreement and the acts and regulations relative to non-discrimination on the grounds of race, color or national origin.

**4. Information and Reports.** The Consultant will provide all information and reports required by the acts, regulations and instructions 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 Kansas Department of Transportation (KDOT) or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Acts, Regulations. Where any information required of a consultant or subconsultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to KDOT or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

**5. Sanctions for Noncompliance.** In the event of Consultant's noncompliance with the non-discrimination provisions of this Agreement, KDOT may impose such contract sanctions as it may determine to be appropriate including, but not limited to: (a) withholding payments to Consultant under the Agreement until the Consultant complies; and/or (b) cancelling, terminating or suspending the Agreement, in whole or in part.

**6. Incorporation of Provisions.** The Consultant will include the provisions of this Special Attachment No. 1 in every subconsultant agreement, unless exempt by the acts, regulations and directives issues pursuant to thereto. The Consultant will take action with respect to any subconsultant as KDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subconsultant because of such direction, the Consultant may request KDOT to enter into any litigation to protect the interests of KDOT. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.

**Pertinent Non-Discrimination Authorities:**

- 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);
- 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 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (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, which 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 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination 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, which ensures discrimination 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 Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (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, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

State of Kansas  
Department of Administration DA-146a  
(Rev. 07-19)

**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.



**Certification Regarding Lobbying**

[Reference: 23 CFR 172.9(c)(2), 49 CFR Part 20]

The Consultant certifies, to best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. The Consultant shall require that the language of this certification be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement. Any person who fails to comply with 31 USC 1352 and related regulations may be subject to civil penalty not less than \$10,000 and not more than \$100,000 for each such failure.

Consultant: \_\_\_\_\_  
(Firm Name)

By: \_\_\_\_\_  
(Signature of Duly Authorized Representative of Consultant)

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**VERIFICATION AS TO HISTORY and CURRENT STATUS REGARDING  
ELIGIBILITY, SUSPENSION, DEBARMENT, INDICTMENTS, CONVICTIONS or CIVIL JUDGMENTS**  
[FHWA Form 1273]

I, \_\_\_\_\_  
(printed name of President, Chief Executive Officer, senior manager or duly authorized representative of the firm named below)

being duly sworn and under penalty of perjury, hereby verify and affirm, except as specifically noted and written in "Exceptions" below, that

\_\_\_\_\_  
(printed name of firm)  
and any person associated with such above-referenced firm in the capacity of owner, partner, director, executive, officer, manager, project manager, project director, auditor, or any other substantially similar position, including any position involving the administration of Federal or State funds:

- do not have a proposed debarment currently pending;
- are not now, and have not within the last three years, under suspension or debarment, voluntary exclusion or determination of ineligibility by any Federal or State agency;
- have not, within the last three years, had one or more agreements with a public entity (Federal, State or local) terminated for cause or for default; and
- have not, within the last three years, been charged, indicted, convicted, or had a civil judgment rendered against them by a court of competent jurisdiction for any fraud, criminal offense, embezzlement, theft, forgery, bribery, falsification or destruction of records, or for making false statement or receiving stolen property or violation of anti-trust law(s).

Exceptions: \_\_\_\_\_  
(for any exceptions noted, explanatory documentation to be attached)

The undersigned states that the foregoing is true and accurate and furthermore understands and agrees that such verification is a material representation of fact(s) upon which any party is entitled to rely.

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

\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Subscribed and sworn to before me, a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

**CONTRACTUAL SERVICES WITH LEGISLATOR or LEGISLATOR'S FIRM  
REQUIRED CONTRACT CERTIFICATION**

[KSA 46-239 and KSA 46-233]

Kansas law, KSA 46-239(c), requires the Kansas Department of Transportation (KDOT) to report all contracts entered into with any legislator or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for KDOT for compensation. The undersigned hereby certifies the following:

\_\_\_\_\_ **YES**, this Agreement is with a legislator or a firm in which a legislator is a member. That legislator is:

Name: \_\_\_\_\_

Tel: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**OR**

\_\_\_\_\_ **NO**, this Agreement is not being entered into with a legislator or a firm in which a legislator is a member.

The undersigned understands that this certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for the making or entering into this Agreement.

Consultant: \_\_\_\_\_  
(Firm Name)

By: \_\_\_\_\_  
(Signature of Duly Authorized Representative of Consultant)

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

KDOT Project No. \_\_\_\_\_

**CONSULTANT REIMBURSEMENT FOR ACTUAL DIRECT COSTS**See Payment Article

- A. **General Principles of Reimbursement.** Actual direct costs of performing Services are compensable, provided such costs are "allowable" under 48 CFR subpart 31.2 and meet all the following requirements. The costs must be:
- Reasonable
  - Allocable and
  - In accordance with accepted accounting principles and practices appropriate to the circumstances.
- B. **Travel Costs\*.** [Note: A daily itemized cost recap per individual per day of travel shall be submitted with each invoice.] These costs must be submitted at the same time as the labor costs. With respect to travel costs, the following requirements apply.
- 1) Hotel and other lodging.
    - a. The lodging must be a temporary location/residency. If employees move to this location and have no other residency or rent out their previous residency, it will be considered that they moved and that employee will not be on expenses.
    - b. The maximum per-night cost of any hotel or lodging shall not exceed the current rate of:
      - i. \$96.00 per night (2022 rate) for all Kansas locations except Sedgwick, Johnson, Wyandotte, and Leavenworth counties, unless extenuating circumstances justify an increase to a higher maximum amount not to exceed \$144.00 per night;
      - ii. \$103.00 per night (2022 rate) for Sedgwick County, unless extenuating circumstances justify an increase to a higher maximum amount not to exceed \$154.50 per night; and
      - iii. \$123.00 per night (2022 rate) for Johnson, Wyandotte, and Leavenworth counties, unless extenuating circumstances justify an increase to a higher maximum amount not to exceed \$184.50 per night.
    - c. Requests for exceeding the current rate must be submitted with justification and approved by the KDOT's Area Construction Engineer/Manager prior to incurring the expense. Maximum amounts cited above shall exclude taxes.
    - d. Out-of-State Lodging: no costs for out-of-state lodging will be reimbursed unless advance written approval of KDOT's Area Construction Engineer/Manager is obtained prior to incurring the cost.
  - 2) Meal per diem rate. *Per diem* rates for meals will be reimbursed only for those calendar days of travel requiring one or more overnight stays in a hotel or other lodging. The meal *per diem* rate applies for each day requiring an overnight stay.
    - a. The current *per diem* rate for meals is a maximum amount of:
      - i. \$59.00 for all Kansas locations except Sedgwick, Johnson, Wyandotte, and Leavenworth counties; and
      - ii. \$64.00 for Sedgwick, Johnson, Wyandotte, and Leavenworth counties.
    - b. If the hotel accommodation provides breakfast as part of the room or other lodging rate, then the maximum amount is reduced by \$8.85 for all Kansas locations except Sedgwick, Johnson, Wyandotte, and Leavenworth counties and \$9.60 for Sedgwick, Johnson, Wyandotte, and Leavenworth counties, unless some extenuating circumstance exists to disregard the reduction. Consultant shall furnish justification of any extenuating circumstance along with the invoice.
    - c. Billing or invoicing for meal *per diem* must be submitted with the lodging receipt(s).
  - 3) Mileage and other related vehicle costs.
    - a. Per-mile rate. Mileage will be reimbursed in accordance with the then-current standard rate established by the Kansas Department of Administration for authorized business travel using the most direct route (2022 Rate is \$0.560). Mileage recap per day must be maintained and submitted by Consultant with the invoice. The lesser of the distance from the employee's residency or work office will be used for mileage to the project; this mileage must be submitted with the 1<sup>st</sup> invoice per employee.
    - b. Other direct actual costs: Invoices for charges in connection with tolls, parking, etc. must be substantiated by receipts for such costs. Requests for vehicle rental charges must be submitted with justification and approved by the KDOT's Area Construction Engineer/Manager prior to the expense.
- C. **Other Direct Costs.** Actual rates for direct costs incurred by Consultant and invoiced to KDOT which are not substantiated by a third party receipt but billed as a unit, hourly, daily or other rate (such as costs of or hourly "use" charges for equipment, CAD, GPS, LIDAR or similar items), shall be calculated in accordance with the AASHTO Uniform Audit & Accounting Guide. With regard to other supplies or equipment, only those which are (a) required by KDOT for project-specific use and (b) totally

consumed (i.e. paint, lathe, etc.) or used solely in performance of Services may be billed as a direct cost. For example, cell phones and safety equipment such as hard hats, glasses and vests are not reimbursable direct costs.

*\*Travel costs (lodging, meals and mileage) may be adjusted annually by KDOT per federal or state guidelines.*

**Electronic Data Interchange**  
Kansas Department of Transportation

The Secretary and the Consultant desire to process engineering services payments and supplemental agreements to existing engineering services agreements through electronic data interchange (EDI) to receive the benefits of faster payment and processing and to eliminate duplication of effort and time. In consideration of the premises and covenants herein contained, the Parties hereto agree as follows.

1. The Consultant agrees to use an EDI provider approved by the Secretary, to send and receive data files between the Secretary and the Consultant.
2. The Consultant agrees to use the Kansas Department of Transportation's Construction Management System (CMS) as the standard for EDI transactions. The Consultant agrees to use the CMS Manual for Design Consultants in processing pay vouchers and change orders. The Consultant acknowledges that supplemental agreements will be submitted as a change order in CMS. The Consultant agrees to use the Secretary's project number and CMS contract number on all EDI transactions and correspondence.
3. The Consultant agrees to have accepted the EDI pay voucher when the Secretary has issued a finalized CMS pay voucher.
4. The Consultant agrees that the acceptance period for a change order is as follows: The acceptance period will be the period of seven (7) working days after the finalized change order has been transmitted to the Consultant in order for the Consultant to review the change order. If the Consultant detects any errors or omissions during this period, the Consultant will make it known to the Secretary the same. At the end of the acceptance period, the Consultant is deemed to have accepted the change order. Problems with the CMS change order detected after the end of the acceptance period will be resolved by the Secretary.
5. The Consultant agrees that progress reports are to be submitted electronically on a monthly basis. The Consultant agrees that the progress reports will be transmitted monthly, no later than the 24th of each month, the date established by the Secretary.
6. The Consultant agrees to maintain all data, proposals and all documents needed for pay vouchers and change orders for a period of five (5) years after completion of this Agreement. The Consultant will make available for audit, as requested by the Secretary, any such information, whether in an electronic format or on paper.
7. The Consultant confirms that all requests for payment will be for actual work performed based on actual cost.

## KANSAS DEPARTMENT OF TRANSPORTATION

### CONSULTANT STANDARD OF CARE POLICY

#### **I. DEFINITIONS**

A. Construction Contract. A written agreement between the Secretary and a Construction Contractor, requiring the Contractor to construct or reconstruct a Construction Project for which the Consultant is performing Services.

B. Construction Contractor. The individual, partnership, corporation, joint venture, or other legal entity performing a Construction Contract for the Secretary.

C. Consultant. The Consultant firm, its employees, subconsultants, and any other Consultant-retained agents that will be performing services for the Secretary.

D. KDOT. The Kansas Department of Transportation.

E. Negligence. Those acts, errors, or omissions in the Consultant's services that fail to meet the degree of care, skill, and diligence ordinarily exercised by members of the same profession in the same locality under similar circumstances.

F. Problem. The Consultant's negligence, the Consultant's alleged negligence, or the Consultant's failure to comply with its obligations under an agreement with the Secretary.

G. Secretary. The Secretary of Transportation of the State of Kansas.

H. State Transportation Engineer. The KDOT Deputy Secretary of Engineering & State Transportation Engineer of the State of Kansas.

I. Chief of Design. The KDOT Director of the Division of Engineering and Design, or his or her designee.

J. Solution. Corrective action(s) to overcome a Problem, including without limitation: 1) the Consultant revising reports, technical data, special provisions, plans, or a combination thereof; 2) the Secretary hiring a third party to make revisions to final reports, technical data, special provisions, plans, or a combination thereof; 3) the Secretary using the Construction Contractor or retaining a third party to repair, remove, or remove and replace work performed on the Construction Contract.

## II. KDOT'S AND CONSULTANT'S OBLIGATIONS UPON ENCOUNTERING A PROBLEM

A. If a Problem presents an immediate danger to persons or property, the KDOT personnel shall take those steps necessary to fulfill the Secretary's obligations for public safety.

1. The KDOT personnel shall notify the Consultant and furnish information to the Consultant as provided in Section II.B; however, the Consultant may not be given time to investigate the Problem or assist in determining the Solution.

2. If the Chief of Design determines the Solution without the Consultant's input and the Consultant disagrees with the Solution, cost, or both, the Consultant may appeal to the State Transportation Engineer the Chief of Design's decision of the Solution, costs, or both. The Consultant shall file this appeal within 15 calendar days after the Chief of Design furnishes the Consultant a written decision on the Solution, cost, or both. The State Transportation Engineer will hold a formal, administrative hearing as provided in Section III below.

B. If KDOT personnel believe that a Problem may cause or has caused KDOT to incur economic or other damages and does not present an immediate danger to persons or property, the KDOT personnel will:

1. Notify verbally both the Consultant and the Chief of Design of the Problem upon discovering the Problem. Follow the verbal notice with written notice that identifies the Problem and the nature of the potential economic and other damages that may result from the Problem. Furnish a monetary estimate of the potential damages if possible.

2. Furnish to the Consultant and Chief of Design all relevant information KDOT personnel have on the Problem as soon as the information is obtained; and

3. Give the Consultant, in the written notice, a designated time to investigate the Problem and assist in determining the best Solution. KDOT will determine this time based on the nature of the Problem, the severity of the Problem, the Consultant's ability to respond, and the traveling public's needs, among other things. The Consultant's responsibility to mitigate damages is not restricted or controlled by the designated response time.

C. The Consultant and the Chief of Design will attempt to agree upon a Solution except when an immediate danger situation prevents such an attempt. The Consultant and the Chief of Design will attempt to agree upon the costs necessary to implement the Solution. The Chief of the Bureau of Design may hold an informal meeting to discuss potential Solutions, costs, or both.

1. If the Consultant does not offer a Solution(s) within the time KDOT designates in Section II.B or within a different time the parties have agreed upon and KDOT needs to minimize delay to third parties and minimize other damages (personal injury, property, or economic damages), the Chief of Design may determine the Solution without the Consultant's input. The Consultant waives the right to challenge the Solution the Chief of Design selects when the Consultant has



failed to offer its input timely although the Consultant does not waive the right to challenge the amount of the damages incurred.

2. If the Consultant offers a Solution(s) within a reasonable time and the Consultant and Chief of Design agree upon that Solution, their agreement will bind the Consultant and Secretary. KDOT's agreement to the Solution is not an undertaking of the Consultant's responsibility for the Solution.

3. If the Consultant and Chief of Design are unable to agree upon a Solution, the cost of the Solution, or both, the Consultant may appeal to the State Transportation Engineer the Chief of Design's decision of the Solution, cost, or both. The Consultant shall file this appeal within 15 calendar days after the Chief of Design furnishes the Consultant a written decision on the Solution, cost, or both. The State Transportation Engineer will hold a formal, administrative hearing as provided in Section III below.

D. KDOT will endeavor to comply with Section II.B; however, KDOT field personnel may authorize the Construction Contractor or a third party to repair, remove, or remove and replace work performed on the Construction Contract without complying with Section II.B. KDOT's failure to give the Consultant notice, time to investigate the Problem, the opportunity to assist in determining the Solution, or a combination thereof is not a breach of contract or breach of good faith and fair dealing. KDOT's failure to give the Consultant notice, time to investigate the Problem, the opportunity to assist in determining the Solution, or a combination thereof does not excuse the Consultant's obligation to design the Solution and pay for the economic damages or other damages KDOT incurs because of the Problem. Yet, nothing in Section II prevents the Consultant from asserting that the Solution is arbitrary or the damages are excessive.

E. Nothing in this Section II prevents the Secretary from requiring the Consultant to design a particular Solution. If KDOT orders a particular Solution and the Solution is unsuccessful through no fault of the Consultant, the Secretary will bear the costs incurred in developing and implementing the unsuccessful Solution.

### **III. FINAL ADMINISTRATIVE HEARING AND APPEAL RIGHTS**

A. For Problems the Chief of Design and Consultant were unable to resolve under Section II of this Policy, the State Transportation Engineer will hold a formal, final administrative hearing or will appoint another hearing officer or a hearing panel to hold a formal, final administrative hearing.

1. The State Transportation Engineer has sole discretion to conduct the final administrative hearing or appoint another hearing officer or a panel for this purpose. Any hearing officer may be a KDOT employee or a non-KDOT employee. Any panel may consist of KDOT employees, non-KDOT employees, or a combination thereof.

2. If the Consultant requests a non-KDOT hearing officer or panel and the State Transportation Engineer grants this request, both parties will share equally the expense of the outside hearing officer or panel.

B. Time Period for Filing Appeals; Waiver. The Consultant shall file its appeal within 15 calendar days after the Chief of Design furnishes the Consultant a written decision on the Solution, cost, or both. Alternatively, the Consultant may obtain the Chief of Design's approval to file the appeal outside the 15-calendar day period. If the Consultant fails to file the appeal within the required 15 calendar days or fails to obtain a time extension, the Consultant waives the right to appeal the claim and accepts the Chief of Design's decision.

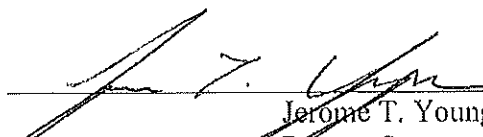
C. Hearing Procedure. The final administrative hearing will take the following form unless the Consultant and Secretary agree otherwise in writing.

- Before the hearing, the Consultant shall submit a written statement identifying the issues in dispute (questions of law and questions of fact);
- A court reporting service will record the hearing. A party may request a written transcript of the proceeding at that party's expense;
- All witnesses will testify under oath;
- A party may have Legal Counsel present. Counsel has the right to examine all witnesses;
- Formal rules of evidence do not apply. While hearsay is admissible generally, the hearing officer may require further substantiation or authentication of hearsay evidence;
- Legal Counsel may present a party's arguments; however, these arguments are not evidence. Thus, for the hearing officer to consider these arguments, Counsel's arguments must be supported by witness testimony, documentation provided to the hearing officer, or both; and
- The agency record will consist of the hearing transcript, all documentation submitted to the hearing officer or panel at the hearing, and all documentation the hearing officer or panel and State Transportation Engineer considered in reaching a decision.

D. Final Agency Decision. The State Transportation Engineer will issue a final agency decision whether the State Transportation Engineer conducts the hearing or appoints a hearing officer or panel to conduct the final administrative hearing. If a hearing officer or a panel conducted the final administrative hearing, the State Transportation Engineer will issue the Agency's final decision after:

- reviewing the hearing officer's or panel's decision with the agency record; and
- concurring in the decision or modifying the decision as the State Transportation Engineer deems best.

E. The State Transportation Engineer's decision under this Consultant Standard of Care Policy represents KDOT final agency action under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA) K.S.A. 77-601 et seq.

  
\_\_\_\_\_  
Jerome T. Younger, P.E.  
Deputy Secretary for Engineering and  
State Transportation Engineer

1/31/14  
DATE

## Certificate of Final Indirect Costs\*

This is to certify that I have reviewed this proposal to establish the final indirect cost rate and to the best of my knowledge and belief:

1. All costs included in the proposal dated \_\_\_\_\_ for KDOT Project No. \_\_\_\_\_ to establish final indirect cost rate of \_\_\_\_\_ for the period of \_\_\_\_\_ to \_\_\_\_\_  
(insert indirect (overhead) cost rate) (insert start & end date of applicable fiscal year of Firm)

are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), Part 31; and

2. This proposal does not include any costs which are expressly unallowable under applicable Federal cost principles of the Federal Acquisition Regulations (FAR) title 48, Code of Federal Regulations (CFR), Part 31.

Firm: \_\_\_\_\_

\*\*By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name of Certifying Official

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**\*Note:** the term "Indirect Cost Rate" may also be referred to elsewhere as the "overhead rate", "overhead multiplier" or the "indirect (overhead) cost rate" or similar alternative expressions.

**\*\*Federal regulation 23 CFR 172.11(c)(3)(ii) requires that the certifying official to be an individual executive or financial officer of the firm's organization at a level no lower than Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate submitted to KDOT.**

---

For KDOT to complete:

Firm Name: \_\_\_\_\_

Indirect (Overhead) Cost Rate: \_\_\_\_\_

Time Period (Firm's Fiscal Year) Covered by the Indirect (Overhead) Cost Rate: \_\_\_\_\_

## TAX CLEARANCE CERTIFICATE

[KSA 75-3740(d)]

The Tax Clearance Certificate process is a tax account review by the Kansas Department of Revenue to determine compliance and good standing with certain Kansas tax laws. The Tax Clearance Certificate is not “clearance” for all types of taxes which may be due and owing or that the State of Kansas may assess; however, **prior to signing any agreement, Consultant and each of its subconsultants are required to obtain a current Tax Clearance Certificate from the Kansas Department of Revenue and furnish copies of the same to KDOT.**

To obtain a Tax Clearance Certificate, visit <http://www.ksrevenue.org/taxclearance.html> for information.

### **Policy Regarding Sexual Harassment**

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

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

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

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

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

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.

7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.
9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

**REQUIRED CONTRACT PROVISION  
CERTIFICATION -- BOYCOTT OF ISRAEL PROHIBITED**

In accordance with K.S.A. 75-3740f, the State of Kansas shall not enter into a contract with any Company to acquire or dispose of goods or services, including without limitation supplies, information technology or construction, with an aggregate price of more than \$100,000 unless such Company submits a written certification that such Company is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the State. 50 U.S.C. § 4607 prohibits any United States person engaged in interstate or foreign commerce from boycotting or taking actions that further or support "any boycott fostered or imposed by a foreign country against a country which is friendly to the United States", with limited exceptions.

Following award of the contract to the Consultant, the Consultant shall certify that the Consultant is not currently engaged in a boycott of goods or services from Israel. KDOT shall provide a copy of the Contractor Required Contract Provision 07-01-17-R01 (Certification) along with the contract. Sign and return to KDOT the Certification and the contract. The Secretary will not sign the contract until the Consultant has provided the Certification.

If the Consultant fails to submit the required Certification, the Secretary will cancel the award of contract to that Contractor and either re-award the contract to the next most highly ranked consultant.

As a Consultant entering into a contract with the Secretary of Transportation, as the principal contracting party for the State of Kansas or as the agent for a disclosed Local Public Authority, it is hereby certified that the Consultant listed below is not currently engaged in a boycott of Israel as set forth in K.S.A. 75-3740e and 75-3740f.

1-28-21 C&M (HAH)