

MINUTES FOR JULY 6, 2015
BOARD OF CHEROKEE COUNTY COMMISSIONERS
CHEROKEE COUNTY, KANSAS

CONVENE

Commissioner Hilderbrand called the regular session of the Cherokee County Board of Commissioners (The Board), to order and led all in attendance in the Pledge of Allegiance at 9:00 AM on Monday, July 6, 2015 in the Commission Room, #109 of the Cherokee County Courthouse located at 110 W Maple St., Columbus, Kansas. Commissioners Richard Hilderbrand, Charles Napier, Pat Collins, and County Clerk Rodney Edmondson were present.

Members of the press present: Larry Hiatt, Machel Smith, Jordan Zabel

A motion was made by Commissioner Hilderbrand to appoint Mark Hixon to fill the vacant position of County Appraiser. The motion was seconded by Commissioner Collins. The motion carried 3-0.

A motion was made by Commissioner Collins to approve the Minutes of the BOCC Meeting for June 29, 2015. The motion was seconded by Commissioner Napier. The motion carried 3-0.

Commissioner Collins reported that he checked on the roads in Turk that Mr. Coy was concerned about last week. He stated that the weeds have now been cut and the roads graded.

Leonard Vanatta - County Road Supervisor
Gene Langerot - County Lot Supervisor

They appeared before the Board on routine county road business.

Gene presented a request to purchase a CIC Powerbox for the maintenance truck and possibly for the two bridge trucks. They are a self-contained unit that provides multiple functions including 110 Volt AC electric. They are made in Weir. The battery unit will last up to seven hours and is recharged while the vehicle is running. The Board approved the purchase of one unit for the maintenance truck as a trial before buying more.

A motion was made by Commissioner Hilderbrand to enter an Executive Session with the Board, Leonard Vanatta, and Gene Langerot for the purpose of Non/Elected Personnel for a period of five minutes. The motion was seconded by Commissioner Collins. The motion carried 3-0 at 9:28 AM.

The meeting reconvened at 9:33 AM.

No action was taken during the Executive Session.

A motion was made by Commissioner Hilderbrand to enter an Executive Session with the Board for the purpose on Non/Elected Personnel for a period of 10 minutes. The motion was seconded by Commissioner Collins. The motion carried 3-0 at 9:35 AM.

The meeting reconvened at 9:45 AM.

RH

No action was taken during the Executive Session.

Paul Rogers - Meals on Wheels

He appeared before the Board to present a draft resolution for the board to review regarding the meals on wheels program that he brought before the Board last week. He would like to present it to the Area Agency on Aging tomorrow. The Board will have the County Counselor review the resolution before taking any action.

Department Heads - Monthly Reports

They met with the Board for their routine monthly meeting with the following Department Heads present: Barbara Bilke, Register of Deeds; Betha Elliott, Health; David Groves, Sheriff; Deana Randall, Human Resources; Jason Allison, Emergency Preparedness; Juanita Hodgson, Treasurer; Mark Hixon, Appraiser; Ralph Houser, Maintenance; Rodney Edmondson, Clerk; Wayne Elliott, 911 Addressing & Mapping.

Barbara Bilke - She provided a written report. They have issued 38 passports so far this year.

David Groves - He reported that his department just completed a joint operation with the U.S. Marshals Service regarding registered sex offenders. Four were found not to be in compliance and warrants have been issued. One has been located in Wyoming. He informed everyone that the new Kansas law allowing any non-prohibited person to carry a concealed handgun without a permit took effect on July 1st. That law only applied if you are in Kansas. He presented a jail service agreement from TurnKey Corrections for inmate services for the Board to consider. It provides a more streamline operation and suits the needs better than the current process. The Board approved the agreement. He informed the Board that due to the state financial situation, beds at the state hospitals in Larned and Osawatomie are limited. He is currently housing inmates that are mentally ill and want to do harm to themselves until beds are available elsewhere. This presents potential hazards to other inmates and staff.

Jason Allison - He reported that he has submitted the funding request for next year to the State. He also stated that he has been working with Leonard and FEMA in trying to obtain funding for Lightning Creek Rd and bridge for cleanup after flooding.

Juanita Hodgson - She provided a budget and fund balance sheet for the first half of the year. She reported that DMV will continue to send vehicle renewal notices to residents.

Wayne Elliott - He reported the issuance of four new addresses last month.

Commissioner Collins stated his appreciation and the team effort to each department to keep our government flowing.

Vernon Hill - Former Neosho Township Trustee

He appeared before the Board and brought in the Neosho Township property that he had as requested by the Township Board. The County Clerk took possession of the property and will forward it to the Township Board.

AF

Ron Beecham - Citizen

He appeared before the Board to inform them that he has a private herbicide license and would like to be considered if the Noxious Weed Position opens up.

Carl Hayes - County Environmentalist

He presented documents pertaining to the Ozone Advance program as a follow up from a prior discussion with the Board. It's a collaborative effort by the E.P.A. and local agencies to encourage emission reductions and focuses on maintaining ozone standards. He would need a letter of support from the Board to join the alliance. The Board will have the Clerk draft a letter of support.

He appeared before the Board along with Gene Langerot and Johnny Zwahlen regarding the new recycling trailer and KWORC viewing the design as a safety risk. The plastic bins are \$296 each. He is in the process of trying to locate another manufacturer of the plastic bins. Johnny stated that the recycle center told him used trailers or bins could be located. The Board instructed Carl to get used plastic lids if available and if not order new ones.

Nathan Coleman - County Counselor

He appeared before the Board via telephone regarding legal matters concerning Cherokee County.

A motion was made by Commissioner Hilderbrand to enter an Executive Session with the Board and Mr. Coleman via telephone for the purpose of Attorney/Client Privilege for a period of 10 minutes. The motion was seconded by Commissioner Collins. The motion carried 3-0 at 9:36 AM.

The meeting reconvened at 9:46 AM.

No action was taken during the Executive Session.

Mr. Coleman reported that he and Commissioner Collins attended the Kansas Racing and Gaming Commission meeting last week. Cherokee County was well represented by officials and citizens at the public meeting and each were given time to speak. KRGC did follow the recommendation of the Review Board and approved Kansas Crossing to operate a casino in Crawford County.

A motion was made by Commissioner Hilderbrand to enter an Executive Session with the Board, Special Counsel David Cooper, and Counselor Nathan Coleman, both via telephone for the purpose of Attorney/Client Privilege for a period of 15 minutes. The motion was seconded by Commissioner Collins. The motion carried 3-0 at 11:55 AM.

The meeting reconvened at 12:10 PM.

No action was taken during the Executive Session.


A motion was made by Commissioner Hilderbrand to authorize Counselor Nathan Coleman to review and proceed with any and all legal avenues of recourse as a result of the KRGC ruling.

RH

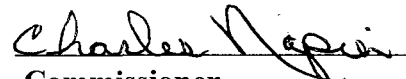
The motion was seconded by Commissioner Collins. The motion carried 2-1 with Commissioner Napier voting no.

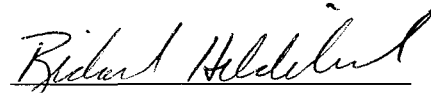
Commissioner Hilderbrand made a motion to adjourn until the next regularly scheduled meeting set for July 13, 2015 at 9:00 AM. The motion was seconded by Commissioner Napier. The motion carried 3-0 with all voting yes at 12:20 PM.

ATTEST: Resolved and ordered this 13th day of July, 2015


Cherokee County Clerk
Deputy Clerk


Commissioner


Commissioner


Commissioner

**RESOLUTION IN SUPPORT OF OFFERING THE SEK-AAA “SEVEN MEAL-PAK” OPTION TO CHEROKEE
COUNTY SENIORS**

As a long time financial underwriter and sponsor of the SEK Area Agency on Aging “Meals on Wheels” program in Cherokee County, we wish to go on record as strongly in support of your efforts to decrease operating costs, increase meal service from five to seven days per week, increase food quality and safety, and provide more flexibility with respect to delivery/ pickup times and personal eating schedules, by delivering seven frozen entre’ meal packs with fresh milk, bread and orange juice weekly instead of daily!

This mode of operation will permit participation of qualified residents in the communities of West Mineral, Hallowell, Sherwin Junction, Sherman City, Faulkner, Melrose, Riverton, Lawton and Crestline, and Weir, that have been previously excluded by the impracticality of delivering daily “hot” meals in rural areas.

We further strongly support your proposal to do daily “wellness checks” by phone and in person for those seniors desiring them. We believe these checks should be made by neighborhood volunteers operating from the existing and new community meal centers.

We strongly request that current and prospective Program participants in Cherokee County be given the option to participate in the Prepackaged, 7-PAK meal program!

Cc:

SEK-Area Agency on Aging, Chanute,KS

Senior services of Southeast Kansas , Coffeyville,KS

PROJECT NO. 11 C-0235-15
FUND EXCHANGE
CHEROKEE COUNTY, KANSAS

AGREEMENT

This Agreement is between MICHAEL S. KING, Secretary of Transportation, Kansas Department of Transportation (KDOT) (the "Secretary") and CHEROKEE COUNTY, KANSAS (the "County").

RECITALS:

- A. Secretary has authorized a Federal Fund Exchange Program under which local units of government may exchange some or all of the Federal Funds allotment by KDOT to the local unit in a specific federal fiscal year for State Funds allocated to Secretary.
- B. County desires to exchange all or a portion of County's annual allotment of Federal Funds for State Funds at the Exchange Rate or to bank all or a portion of its annual allotment, such amount to be used in the future for either a Federal-Aid Project or exchanged for State Funds at the Exchange Rate.
- C. Secretary and County are empowered by the laws of Kansas to enter into agreements incident to the financing, construction, and maintenance of county roads utilizing federal or state funds.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. "**Agreement**" means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. "**County**" means Cherokee County, Kansas.
3. "**Effective Date**" means the date this Agreement is signed by the Secretary or his designee.
4. "**Exchange Rate**" means the exchange of Federal Funds allotment for State Funds at a rate of ninety percent (90%) of State Funds for one hundred percent (100%) of local federal obligation authority for costs incurred pursuant to this Agreement, on a reimbursement basis.

5. **"Federal Funds"** means federal-aid transportation funds, including Surface Transportation Program funds, for use on state and local federal-aid transportation projects.
6. **"KDOT"** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
7. **"Parties"** means the Secretary and KDOT, individually and collectively, and the County.
8. **"Secretary"** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
9. **"State Funds"** means State of Kansas transportation funds.

ARTICLE II

TERMS OF AGREEMENT:

1. **Secretary Authorization.** Secretary is authorized by County to take such steps as are deemed by Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this exchange.
2. **Incorporation of Program Application.** County has submitted a program application for this Federal Fund exchange, which is hereby incorporated into and made a part of this Agreement for all purposes.
3. **Exchange of Funds.**
 - (a) When the County requests to use the banked funds for a Federal-Aid Project, the Secretary will apply one hundred percent (100%) of the requested amount to said project, up to \$992,488.34 in Federal Funds.
 - (b) When the County requests to use the exchanged or banked funds pursuant to the Federal Fund Exchange Program, the following terms will apply to the exchange:
 - (i) County authorizes Secretary to retain and use \$992,488.34 of County's annual allotment of Federal Funds for federal fiscal years 2012, 2013, 2014, and 2015 in exchange for State Funds at the Exchange Rate.
 - (ii) Secretary shall reimburse County, with State Funds, for one hundred percent (100%) of costs incurred pursuant to this Agreement, up to \$893,239.51. All costs incurred in excess of the fund exchange amount will be the sole responsibility of the County.
 - (iii) Any State Funds exchanged pursuant to this Agreement may be carried over in the next federal fiscal year by County.

- (iv) County understands that Secretary may use the retained Federal funds exchanged by County for any federally eligible purpose or project within the State.
- (v) The Secretary will make partial payments to County for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing showing costs paid by County and any reimbursement form required by KDOT.

4. **Limitations on Use of State Funds.**

- (a) County shall not deposit the exchanged State Funds into the operating budget for the County.
- (b) County shall use the State Funds exchanged pursuant to this Agreement for:
 - (i) specific road and bridge projects, as pre-approved by the Secretary, which are eligible under KDOT's Federal Fund Exchange Guidelines, including but not limited to roadway construction, reconstruction or rehabilitation, pavement preservation programs, bridge construction, replacement, rehabilitation, repair and removal, construction of low water crossing, safety improvement programs; and
 - (ii) for all phases of the pre-approved road and bridge project including, but not limited to preliminary engineering, right of way acquisition, utility relocation, construction and inspection.
- (c) Upon completion of the road or bridge project, County shall notify Secretary and allow the Secretary to participate in a final review of the road or bridge project. Reviews by the Secretary are not done for the benefit of County or its contractors, or agents, or other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, surveys, and any necessary investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by County.

5. **Availability of State Funds.** The total dollars exchanged under this Agreement are contingent upon the availability of State funds. If, in the judgment of Secretary, sufficient State Funds are not appropriated to continue the function performed in this Agreement, Secretary may terminate this Agreement without further notice. Secretary will not be responsible to County for any reduction in State Funds.

6. **Availability of Federal Funds.** The total dollars exchanged under this Agreement are also

contingent upon the availability of Federal funds. If, due to Congressional funding restrictions, sufficient Federal funds have not been allocated to County, Secretary shall exchange funds in the amount available.

7. **Audit.** County will participate and cooperate with Secretary in an audit which will occur either annually or by project. County shall make its records and books available to representatives of Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with State Funds to the County for items considered non-participating, County shall promptly reimburse Secretary for such items upon notification by Secretary.
8. **Compliance with Federal and State Laws.** County shall comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances governing the projects undertaken pursuant to this Agreement.
9. **Right of Way Acquisition.** All right of way acquisition for the project shall be done in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.
10. **Legal Authority.** County shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.
11. **Indemnification.** To the extent permitted by law, County agrees to defend, indemnify, hold harmless, and save Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by County or County's employees.

ARTICLE III

GENERAL PROVISIONS:

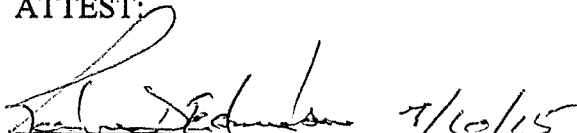
1. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
2. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.
3. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon Secretary and County and their successors in office.


- 4. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- 5. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.
- 6. **Effective Date.** This Agreement will become effective as of the date signed by Secretary or his designee.

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

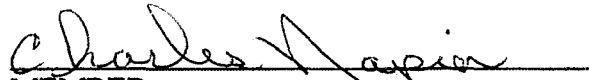
ATTEST:

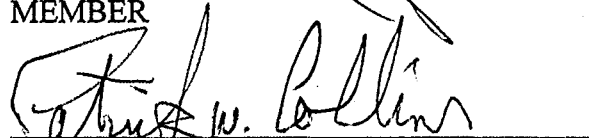
CHEROKEE COUNTY, KANSAS


 COUNTY CLERK 7/10/15
(Date)


 CHAIRPERSON

(SEAL)


 MEMBER


 MEMBER

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____
 Jerome T. Younger, P.E. (Date)
 Deputy Secretary and
 State Transportation Engineer

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. 06-12), 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 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 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 to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (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) if it is determined that the contractor has violated applicable provisions of ADA, 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.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
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.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) **Compliance with regulations:** The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) **Nondiscrimination:** The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontractors, including Procurements of Material and Equipment:** In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) **Employment:** The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) **Disadvantaged Business Obligation**
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) **Executive Order 12898**
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

