

RESOLUTION NO. 061217-2

A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A KANSAS AIRPORT IMPROVEMENT PROGRAM (KAIP) GRANT FOR THE MAIN APRON CRACK SEAL PROJECT AT THE ABILENE MUNICIPAL AIRPORT

WHEREAS, the City of Abilene applied for and has been selected to receive a Kansas Airport Improvement Program grant from the Kansas Department of Transportation; and

WHEREAS, the City Commission desires to accept the KAIP grant and perform the work as specified therein; and

WHEREAS, the City Commission has allocated the required matching funds to meet the City's obligation under the Airport Preservation Agreement.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, authorizes the Mayor to enter into the Airport Preservation Agreement, as attached as Exhibit A.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 12th day of June, 2017.



ATTEST

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS

By: Dee Marshall
Dee Marshall, Mayor

EXHIBIT A

Airport Preservation Agreement

June 12, 2017

AIRPORT PRESERVATION AGREEMENT

This Agreement is between the **Secretary of Transportation of the State of Kansas, Kansas Department of Transportation (KDOT)** (the "Secretary") and **CITY OF ABILENE, KANSAS** (the "Airport"), collectively, the "Parties."

RECITALS:

- A. The Airport has applied for and the Secretary has approved an Airport Maintenance Project to: **Crack Seal the Main Apron** for the Abilene Municipal Airport.
- B. The Secretary has approved the use of Kansas Airport Improvement Program (KAIP) funds from the State's General Aviation Airport Development Fund for this purpose, limited to the scope of the Project, as further described below.
- C. The Secretary and the Airport are empowered by the laws of Kansas to enter into agreements for the construction, planning and maintenance of the airport.
- D. The Secretary and the Airport desire to enter into this Agreement to participate in the cost of the Project by use of 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. **"Airport"** means the City of Abilene, Kansas, with its place of business at 419 N Broadway, PO Box 519, Abilene, Kansas 67410.
3. **"Construction"** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or pavement; any drainage, dredging, excavation, grading or similar work upon real property.
4. **"Construction Contingency Items"** means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
5. **"Construction Engineering"** means inspection services material testing, engineering consultation and other reengineering activities required during Construction of the Project.
6. **"Contractor"** means the entity awarded the Construction contract for the Project by the Airport, and any subcontractors working for the Contractor or the Airport with respect to the Project.

7. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement and as approved by FAA.
8. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
9. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 et seq., Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 et seq., Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 et seq., Hazardous Waste.
10. **“KAIP”** means the Kansas Airport Improvement Program, administered by KDOT’s Division of Aviation.
11. **“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.
12. **“Letting” or “Let”** means the process of receiving bids prior to an award of a Construction contract for any portion of the Project.
13. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not Participating Costs.
14. **“Participating Costs”** means expenditures for items or services which are an integral part of the Project, as reasonably determined by the Secretary.
15. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the Airport.
16. **“Project”** means all phases and aspects of the endeavor to be undertaken by the Airport, being as follows: Crack Seal the Main Apron, and is the subject of this Agreement.
17. **“Project Limits”** means that area of the Project, including all areas between and within the Right of Way boundaries as shown on the final Design Plans.

18. **“Right of Way”** means the real property and interests therein necessary for construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the final Design Plans.
19. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Payment of Costs.** In accordance with KAIP guidelines, the Secretary agrees to reimburse the Airport ninety percent (90%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$96,525.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$107,250.00. The Secretary reserves the right to retain up to five percent (5%) of the Secretary's maximum participation until the Airport completes its obligations under this Agreement to the satisfaction of the Secretary.
2. **Reimbursement Payments.** The Secretary agrees to make such payment to the Airport as soon as reasonably possible after construction of the Project is completed and after receipt of proper billing and certification by the Airport that the Project was constructed within substantial compliance of the approved plans and specifications.
3. **Verification of Project Start** – The Secretary shall not reimburse the Airport until the Secretary receives verification from the Airport that the Project is underway. Verification for the Project may consist of evidence of construction, proof of hiring consultant or contractor for the Project, or other method deemed acceptable by the Secretary's authorized representative. Failure to submit verification that the Project has been started within two (2) years of the effective date shall result in the Secretary cancelling the Project. Permission to delay the Project start must be approved by the Secretary and evidenced by a supplemental agreement executed by both Parties.

ARTICLE III

AIRPORT RESPONSIBILITIES:

1. **Project Administration.** The Airport shall be responsible for undertaking and completion of the Project. Immediately after the Project is Let, the Airport shall notify KDOT's Division of Aviation to communicate the date the contract is Let, the total contract amount, and any other requested information related to the Project.
2. **Design and Specifications.** The Airport will prepare Design Plans if required for the Project, Let the contract, construct the Project in accordance with the final Design Plans, inspect the Construction, and administer both the Project and the payments due the Contractor, including the portion of cost borne by the Secretary. The Airport shall separate and list apart the Participating Cost bid items from Non-Participating Cost bid items on both the final Design Plans and the bid documents.

3. **Submission of Design Plans to Secretary.** If requested, the Airport will furnish to KDOT's Division of Aviation one (1) set of final Design Plans.

4. **Performance Bond.** The Airport has the discretion to require the Contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

5. **Final Acceptance.** The Airport shall obtain final acceptance and certification of the Project through KDOT's Division of Aviation.

6. **Prevailing Wages.** The Airport will require the Contractor to pay prevailing wages. The Airport will incorporate into the Construction contract the current general wage decision for the county in which the Project is being constructed. The Airport can obtain the current wage decision from KDOT's Bureau of Construction and Materials website.

7. **Utilities.** The Airport will move or adjust, or cause to be moved or adjusted all Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing Utilities to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The expense of such removal or adjustment shall be borne by the owner or the Airport.

8. **Hazardous Waste.** The Airport agrees to the following with regard to Hazardous Waste:

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

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

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

(d) **No Waiver.** By signing this Agreement the Airport has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification

or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project limits. The Airport reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project limits.

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

10. **Indemnification by Contractors.** The Airport agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the Airport from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the Airport defends a third party's claim, the Contractor shall indemnify the Secretary and the Airport for damages paid to the third party and all related expenses either the Secretary or the Airport or both incur in defending the claim.

11. **Inspection of Records.** During Project execution, representatives of the Secretary may make periodic inspection of the Project and the records of the Airport as may be deemed necessary or desirable. The Airport will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as necessary to the performance of this Agreement.

12. **Financial Obligation.** In accordance with KAIP guidelines, the Airport will be responsible for ten percent (10%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$107,250.00, which is the estimated total actual costs for the Project. The Airport agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$107,250.00 for the Project. The Airport shall also pay for any Non-Participating Costs incurred for the Project. The Airport shall separate and list apart the Participating Cost bid items (i.e., state aid eligible costs) from the Non-Participating Cost bid items in its Project accounting and on the final Design Plans and the bid documents.

13. **Audit.** The Airport will participate and cooperate with the Secretary in an annual audit of the Project. The Airport shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments that have been made with state funds by the Airport for items considered Non-Participating Costs, the Airport shall promptly reimburse the Secretary for such items upon notification by the Secretary.

14. **Accounting.** Upon request by the Secretary, the Airport will provide the Secretary an accounting of all actual Non-Participating Costs associated with the Project which are paid directly by

the Airport to any party outside of the Secretary and costs incurred by the Airport not to be reimbursed by the Secretary. This will enable the Secretary to report all costs of the Project to the legislature.

15. **Legal Authority.** The Airport 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.

16. **Project Modification.** Any the following Project changes require the Airport to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be let
- b. Project description
- c. Project scope

During construction the Airport shall notify the Secretary of any changes in the plans and specifications, which will require the written approval of the Secretary.

17. **Assurance Clause.** At any time that the public is not allowed access to the airport, the Airport agrees to reimburse the Secretary a prorated amount based on a ten (10) year useful life of the Project. This assurance clause will be valid and enforceable for ten (10) years from the date that the final payment is authorized. This provision is only applicable to closure for non-airport purposes.

ARTICLE IV

GENERAL PROVISIONS:

1. **Project Limits.** It is mutually agreed the Project will be constructed within the limits of the Abilene Municipal Airport.

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

3. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to the Project.

4. **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.

5. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this Agreement and made a part hereof.

6. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

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

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

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

AIRPORT

By: Dee Marshall
Name: Dee Marshall
Title: Mayor

By: _____ (date)
KANSAS DEPARTMENT OF TRANSPORTATION
Secretary of Transportation

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.