November 13, 2012
ITEM # I-1

To: **Mayor and Commissioners**

From: **Scott Massman, Superintendent of Engineering**

Subject: **GEOMETRIC IMPROVEMENT PROJECT NO. 166-63 KA-2616-01 AGREEMENT WITH THE KANSAS DEPARTMENT OF TRANSPORTATION**

Recommendation: **Authorize agreement with the Kansas Department of Transportation for FY 2014 Geometric Improvement Project Number 166-63 KA-2616-01**

Discussion: The City of Coffeyville received approval of a FY 2014 Geometric Improvement Project some time ago. The project is located at the intersection of East Fourth Street and Highway 166-169. A drawing depicting the project limits is included with this report. This area is in very bad shape. The angle the intersection is now configured is in a skewed manner instead of being perpendicular to the highway. There is heavy truck traffic in this area and a wider intersection would ease the use of this intersection. A cost estimate also accompanies this report.

The geometric improvement project agreement offers the City's participation to be 10 percent up to a limit of $500,000.00. The current estimate for construction is $514,398.50 according to our engineer Bruce Remsberg of Professional Engineering Consultants, Inc., of Pittsburg, Kansas. The estimate does not include construction engineering which could run as much as 15 percent of the construction costs. If that is the case the potential amount would be $77,160.00.

City staff has made the Kansas Department of Transportation aware of these facts and is working toward increasing their scope to accommodate the increased cost. Geometric improvement projects may be funded up to $800,000.00 according to KDOT Rules.

City staff consulted with the KDOT area engineer as to the prospect of this project which received favorable response as to its concept and selection.

The subject agreement for consideration is for the state's fiscal year 2014, which is based on a fiscal year that begins on July 1 and ends on June 30th. The project could then conceivably be constructed in the summer of 2013.

The subject agreement sets out terms, which the State of Kansas and the City of Coffeyville agree to, which outlines the responsibilities that will be incurred during the course of the project. These responsibilities are the general conditions for a project of this nature. In order to proceed with the implementation of this project this agreement must be executed and returned to the Department of Transportation.

The City of Coffeyville has greatly benefited from this program in the past. The last geometric improvement project was at the intersection of 11th and Walnut.

Staff recommends approval of the 2014 Geometric Improvement Project Agreement with the Kansas Department of Transportation.

RESOLUTION NO. R-12-102

A RESOLUTION TO AUTHORIZE THE SUBMISSION OF AGREEMENT NUMBER 274-12 TO THE KANSAS DEPARTMENT OF TRANSPORTION 2014 GEOMETRIC IMPROVEMENT PROJECT FOR THE INTERSECTION OF EAST FOURTH STREET AND U.S. HIGHWAY 166-169.

Be it resolved, by the Board of Commissioners of the City of Coffeyville, Kansas, that the Mayor and the City Clerk be and are hereby authorized and directed to execute and submit agreement number 274-12 for the 2014 Geometric Improvement Project, to the Kansas Department of Transportation (KDOT) for consideration of funding.

ADOPTED THIS 13th DAY OF NOVEMBER 2012.

_____
David George, Mayor

ATTEST:

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

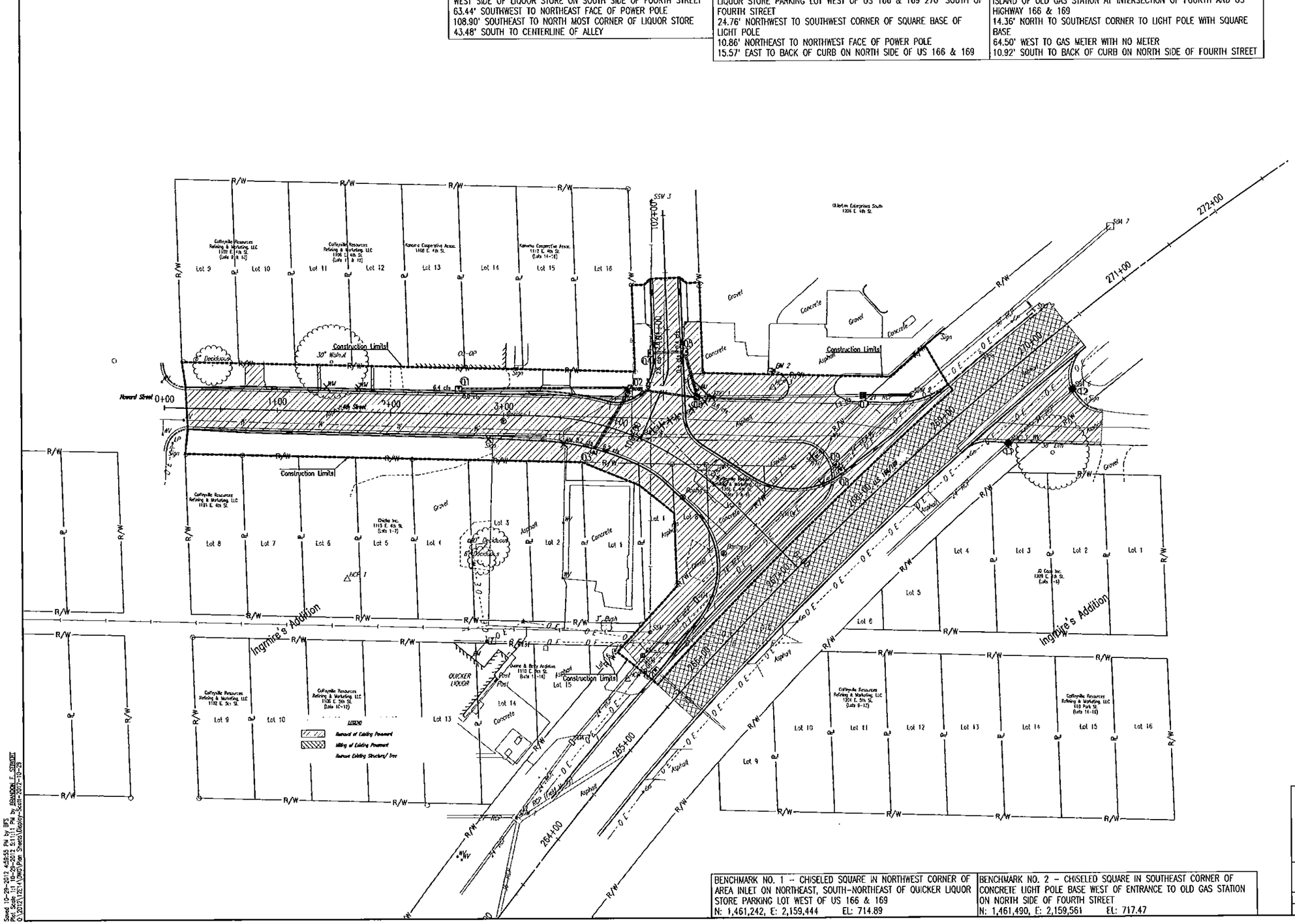
_____
Paul Kritz, City Attorney

STATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL SHEETS
KANSAS	63-KA-2616-01	2014		63

HORIZONTAL CONTROL POINT NO. 1
N: 1,461,310.4374, E: 2,159,184.5707
1/2" REBAR WITH "PEC CP" CAP WEST OF GRAVEL PARKING LOT ON WEST SIDE OF LIQUOR STORE ON SOUTH SIDE OF FOURTH STREET
63.44' SOUTHWEST TO NORTHEAST FACE OF POWER POLE
108.90' SOUTHEAST TO NORTH MOST CORNER OF LIQUOR STORE
43.48' SOUTH TO CENTERLINE OF ALLEY

HORIZONTAL CONTROL POINT NO. 2
N: 1,461,222.0089, E: 2,159,431.3975
1/2" REBAR WITH "PEC CP" CAP NORTHEAST CORNER OF QUICKER LIQUOR STORE PARKING LOT WEST OF US 166 & 169 270' SOUTH OF FOURTH STREET
24.76' NORTHWEST TO SOUTHWEST CORNER OF SQUARE BASE OF LIGHT POLE
10.86' NORTHEAST TO NORTHWEST FACE OF POWER POLE
15.57' EAST TO BACK OF CURB ON NORTH SIDE OF US 166 & 169

HORIZONTAL CONTROL POINT NO. 3
N: 1,461,476.1731, E: 2,159,560.5982
1/2" REBAR WITH "PEC CP" CAP WEST OF SOUTH ENTRANCE IN CURB ISLAND OF OLD GAS STATION AT INTERSECTION OF FOURTH AND US HIGHWAY 166 & 169
14.36' NORTH TO SOUTHEAST CORNER TO LIGHT POLE WITH SQUARE BASE
64.50' WEST TO GAS METER WITH NO METER
10.92' SOUTH TO BACK OF CURB ON NORTH SIDE OF FOURTH STREET



BENCHMARK NO. 1 – CHISELED SQUARE IN NORTHWEST CORNER OF AREA INLET ON NORTHEAST, SOUTH-NORTHEAST OF QUICKER LIQUOR STORE PARKING LOT WEST OF US 166 & 169
N: 1,461,242, E: 2,159,444 EL: 714.89

BENCHMARK NO. 2 – CHISELED SQUARE IN SOUTHEAST CORNER OF CONCRETE LIGHT POLE BASE WEST OF ENTRANCE TO OLD GAS STATION ON NORTH SIDE OF FOURTH STREET
N: 1,461,490, E: 2,159,561 EL: 717.47

KANSAS DEPARTMENT OF TRANSPORTATION

DISPLAY OF CONSTRUCTIONI LIMITS

CITY OF COFFEYVILLE, KANSAS – MONTGOMERY COUNTY

PEC PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
902 SOUTH BROADWAY PITTSBURG, KS 66762
620-235-0195 www.pec1.com

Designed by	BOR	Date	09/2012	Sht of 63
Drawn by	BFS	Job No.	12C14	

Saved: 10-29-2012 4:55:55 PM by BFS
Plot Scale: 1:1 10-29-2012 5:11:11 PM by BRANDON E. STEWART
O:\2012\12C14\Dwg\Plan Sheets\Display-2012-10-29

ESTIMATE OF PROBABLE COST
FIELD CHECK PLANS

Geometric Improvement at US-166/169 and Fourth Street

Professional Engineering Consultants

KDOT Project No. 63 KA-2616-01 — 31-Aug-12

City of Coffeyville, Kansas — BDR

PEC Project No. 334-12E14-3728

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
1	Contractor Construction Staking	Lump Sum	1	$ 10,000.00	$ 10,000.00
2	Field Office	Each	1	11,250.00	11,250.00
3	Mobilization	Lump Sum	1	50,000.00	50,000.00
4	Removal of Existing Structures	Lump Sum	1	15,000.00	15,000.00
5	Maintenance and Restoration of Haul Roads (Set Price)	Lump Sum	1	3,000.00	3,000.00
6	Foundation Stabilization (Set Price)	Cu.Yd	1	42.00	42.00
7	Clearing and Grubbing	Lump Sum	1	5,000.00	5,000.00
8	Common Excavation	Cu.Yd	884	10.00	8,840.00
9	Common Excavation (Contractor Furnished)	Cu.Yd	903	10.00	9,030.00
10	Rock Excavation	Cu.Yd	1,973	20.00	39,460.00
11	Water (Grading)(Set Price)	Mgal	1	35.00	35.00
12	Temporary Surfacing Material (Aggretate) (Set Price)	Cu.Yd	1	35.00	35.00
13	Manhole (Reinforced Concrete)	Each	2	5,200.00	10,400.00
14	Inlet (Type 22 Curb)	Each	6	4,000.00	24,000.00
15	Inlet-Manhole (Special)	Each	4	4,500.00	18,000.00
16	Adjustment of Catch Basin	Each	1	2,500.00	2,500.00
17	Storm Sewer (15")	Ln Ft	213	50.00	10,650.00
18	Storm Sewer (21")	Ln Ft	55	60.00	840.00
19	Storm Sewer (21")(RCP)	Ln Ft	14	60.00	3,600.00
20	Storm Sewer (1.5 Sq Ft)	Ln Ft	60	60.00	3,600.00
21	Granular Backfill (Set)	Cu.Yd	1	40.00	40.00
22	Concrete for Seal Course (Set Price)	Cu.Yd	1	175.00	175.00
23	Curb and Gutter, Combined (AE)	Ln Ft	1,543	25.00	38,575.00
24	Concrete Pavement (8" Uniform)(NRDJ)	Sq. Yd.	3,372	45.00	151,740.00
25	Concrete Pavement (6" Uniform)(AE)	Sq. Yd.	182	45.00	8,190.00
26	Crushed Stone Subgrade (6")	Sq. Yd.	3,977	6.00	23,862.00
27	Milling	Sq. Yd.	2,281	5.00	11,405.00
28	Transporting Salvageable Material	Tons	249	4.00	996.00
29	HMA-Commercial Grade (Class A)	Tons	265	90.00	23,850.00
30	Surfacing Material (SA-1 or SA-X)	Tons	1	20.00	20.00
31	Water (Agg Base)(Set Price)	Mgal	1	30.00	30.00
32	Temporary Fertilizer (15-30-15)	Lbs	110	1.40	154.00
33	Temporary Seed (Canada Wildrye)	Lbs	17	11.00	187.00
34	Temporary Seed (Regreen)	Lbs	22	6.00	132.00
35	Temporary Ditch Check (Rock) (Set Price)	Cu.Yd	1	85.00	85.00
36	Temporary Ditch Check	Ln Ft	40	3.50	140.00
37	Temporary Inlet Sediment Barrier	Each	12	115.00	1,380.00
38	Temporary Slope Barrier (Set Price)	Ln Ft	1	5.00	5.00
39	Sediment Removal (Set Price)	Cu.Yd	1	35.00	35.00
40	Mobilization, Emergency Erosion Control (Set Price)	Each	1	1,000.00	1,000.00
41	Mulching (Temporary)	Acre	1.1	280.00	308.00
42	Seed (Fescue)(Tall Turf Type Blend)	Lbs	198	3.00	594.00
43	Fertilizer (15-30-15)	Lbs	110	1.80	198.00
44	Pavement Marking (Epoxy)(Yellow)(4")	Ln Ft	2,014	1.00	2,014.00
45	Pavement Marking (Epoxy)(White)(6")	Ln Ft	440	1.00	440.00
46	Pavement Marking (Epoxy)(Yellow)(12")	Ln Ft	33	4.50	148.50
47	Pavement Marking (Epoxy)(White)(24")	Ln Ft	76	11.00	836.00
48	Pavement Marking (Patterned Cold Plastic)(White)(Left Turn Arrow)	Each	6	425.00	2,550.00
	TRAFFIC CONTROL				15,000.00
49	Work Zone Sign (0-9.25 sq ft)	Each per Day		0.12	
50	Work Zone Sign (9.25-16.25 sq ft)	Each per Day		0.20	
51	Work Zone Sign (16.25 & over)	Each per Day		0.40	
52	Work Zone Barricades (Type III-4 to 12 Lin Ft.)	Each per Day		0.33	
53	Channelizer (Portable)	Each per Day		0.10	
54	Construction Warning Light (Type "A" Low Intensity)	Each per Day		-	
55	Pavement Marking (Temp) 4" Solid (Type I Tape)	Sta/Line	-	75.00	-
56	Traffic Control (Initial Set Up)	Lump Sum	1	5,000.00	5,000.00
57	Flagger (Set Price)	Hour	1	27.00	27.00

Prepared By Bruce D. Remsberg, P.E.
Professional Engineering Consultants, P.A.

Total Construction $ 514,398.50

Agreement No. 274-12

PROJECT NO. 166-63 KA-2616-01
GEOMETRIC IMPROVEMENTS
CITY OF COFFEYVILLE, KANSAS

AGREEMENT

PARTIES: **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary,"

The City of Coffeyville, Kansas, hereinafter referred to as the "City,"

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized a geometric improvement project, hereinafter referred to as the "Project." The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City. The City desires to construct the Project at the intersection of US-166/169 and Fourth Street in the City. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, in order to be eligible for such state aid, such work is required to be done in accordance with the laws of Kansas.

PROJECT: The Secretary and the City desire to enter into this Agreement for the construction of the Project which is described as follows:

Intersection improvements at US-166/169 and Fourth Street.

EFFECTIVE DATE: The parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the date signed by the Secretary or designee.

ARTICLE I

THE SECRETARY AGREES:

1. To provide technical information upon request to help the City to acquire rights of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT.

2. To let the contract for the Project and award the contract to the lowest responsible bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the construction of the Project in accordance with the final design plans and administer the payments due the contractor, including the portion of the cost borne by the City.

3. To require the contractor to indemnify, hold harmless, and save the Secretary and the City 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 City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

4. To be responsible for 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 $450,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of preliminary engineering, construction (which includes the costs of all construction contingency items) and construction engineering that exceeds $500,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

5. After receipt of the final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE II

THE CITY AGREES:

1. The Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection therewith are hereby by the City authorized, adopted, ratified, and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent.

2. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for this Project.

3. To design the Project or contract to have the Project designed in conformity with the state design criteria appropriate for the Project in accordance with the current AASHTO A Policy on Geometric Design of Highways & Streets, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions.

4. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 3 above. Contracts between the City and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 3 above. In addition,

any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.

b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the City and the consultant. Such language shall read:

Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

5. The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations and studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor 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, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

6. To authorize a duly appointed representative of the City to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the licensed professional engineer responsible for preparation of the design plans. Geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological

investigations or studies. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

7. It will, in its own name, as required by law, acquire by purchase, dedication or condemnation all the rights of way, easements and access rights shown on the final design plans in accordance with the schedule established by KDOT. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, such rights of way, easements and access rights have been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all rights of way deeds, dedications, permanent easements and temporary easements.

8. To contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-6-1 et seq.

9. To provide all legal descriptions required for rights of way acquisition. The City further agrees to acquire rights of way, easements, and access rights in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT such the City may obtain participation of state funds in the cost of the Project. The City agrees copies of all documents including recommendations and coordination for appeal, bills, contracts, journal entries, case files or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by the Secretary.

10. Any disposal of or change in the use of rights of way or in access after Project construction will require prior written approval by the Secretary.

11. The Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final design plans, for the purpose of constructing the highway Project. The Secretary shall not participate in the cost of these rights of way or easements.

12. It will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities 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.

Except as provided by state law, the expense of removal or adjustment of utilities located on public rights of way shall be borne by the owners. The expense of removal or adjustment of privately owned utilities located on private rights of way or easements shall be borne by the City

except as provided by state laws. Except where the utility adjustments are participating costs for the Project, the expense of the removal or adjustment of only privately owned utilities located on private rights of way or easements shall be borne by the City and the Secretary in the same proportion as other approved construction costs as stipulated elsewhere in this Agreement.

13. It will expeditiously take such steps as are necessary to facilitate the early adjustment of utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities sixty (60) days prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The City further agrees to certify to the Secretary on forms supplied by the Secretary all utilities required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The City will initiate and proceed to complete adjusting the remaining utilities not required to be moved during construction in order that the contractor shall not be delayed in construction of the Project. The City will indemnify, hold harmless, and save the Secretary and the construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

14. To furnish the Secretary a list of existing and known utilities affected, together with locations and proposed adjustments of the same and designate an individual to be responsible for coordinating the necessary removal or adjustment of utilities.

15. To certify to the Secretary all privately owned utilities occupying public rights of way required for the construction of the Project are permitted thereon by franchise, ordinance, agreement or permit, and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of street or highway improvements.

16. To provide the construction inspection in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City forces or the consultant. The Secretary does not undertake for the benefit of the City, the contractor, the consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

17. To deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the letting date.

18. To 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

$500,000.00 for the Project. In addition, the City 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 exceeds $500,000.00 for the Project. Further, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of preliminary engineering, rights of way and utility adjustments for the Project.

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

20. To participate and cooperate with the Secretary in an annual audit of the Project. The City 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 have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

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

22. To initiate and proceed with diligence to remove or require the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project. It is further agreed all such encroachments be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The City further agrees it will not in the future permit the erection of gas and fuel dispensing pumps upon the rights of way of the Project, and it will require any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All rights of way provided for the Project shall be used solely for public highway purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state laws.

23. To adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

24. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The City will investigate any and all hazardous waste sites discovered during construction of the Project on City owned land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

For any hazardous waste site, including, but not limited to, leaking underground storage

tanks, the City will indemnify, hold harmless, and save the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the parties executing this Agreement any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

The City by signing this Agreement with the Secretary 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 rights of way, easements, and access rights acquired by the City. The City reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the City.

The term 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. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference and include but 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.

The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and city and county standards where the hazardous waste site is located.

25. To prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways the Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.

26. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may safely and expeditiously be served and shall adopt and enforce such rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary.

27. To maintain the control of access rights and to prohibit the construction or use of any entrances or access points along the Project other than those shown on the final design plans, unless prior approval is obtained from the Secretary.

28. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid by the City to any party outside of the KDOT and all costs incurred by the City not to be reimbursed by the KDOT for preliminary engineering, rights of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the Secretary, of the Manual of Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans. The Secretary or his or her authorized representative may act as the City's agent with full authority to determine the dates when any road closings shall commence and terminate. The Secretary or his or her authorized representative shall notify the City of the determinations made pursuant to this section.

2. The final design plans for the Project are by reference made a part of this Agreement.

3. If any items are found to be non-participating by the Secretary, the total cost of these items will be paid by the City.

4. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003 and any amendments thereto are incorporated by reference.

5. The Secretary and City have in the past entered into an agreement covering routine maintenance of the city connecting link, and it is the intention of the Secretary and the City the agreement for routine maintenance shall remain in full force and effect and the mileage set out thereon shall not be affected by this Agreement.

6. The Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

7. 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.

8. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year. KDOT will participate in all costs approved by KDOT incurred prior to the termination of the Agreement.

9. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

10. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers.

ATTEST:

THE CITY OF COFFEYVILLE, KANSAS

_____
CITY CLERK (Date)

_____
MAYOR

(SEAL)

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

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

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.

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

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.