

**AGREEMENT FOR
ENGINEERING AND TECHNICAL SERVICES**

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

A. PURPOSE OF AND AUTHORITY FOR THE AGREEMENT

1. KSA 68-407 authorizes the Secretary to enter into all contracts “incident to the construction, improvement, reconstruction, and maintenance of the state highway system.” KSA 68-407 and KSA 75-5801 *et seq.* authorize the Secretary to take steps necessary to secure engineering and technical services.

2. The Secretary has a highway improvement project under development designated Project No. _____ for _____ requiring engineering, design, and other technical services (Services); however, the Secretary’s engineering and technical forces will be unable to perform all of the Services within the desired completion date. The best alternative is to use a qualified firm to perform the Services needed through this Agreement. The Consultant will furnish these Services in one or more of the following Phases:

Phase A: [Provide field surveys necessary for the discovery phase of the Project and the concepts for the design of the Construction Project, as more fully detailed in Special Attachment No. 4, Scope of Services, attached hereto and incorporated herein.]

Phase B: [Provide the design and plan preparation of the _____ for the Construction Project to the field check stage and provide revisions identified at the field check, as more fully detailed in Special Attachment No. 4, Scope of Services, attached hereto and incorporated herein.]

Phase C: Complete the design plans and specifications for the Construction Project. The Parties will negotiate a scope of services and compensation therefor if and when the Secretary requests the Phase C Services.

Phase D: Provide engineering and other technical Services during construction, including shop drawing review, plan revisions during construction, and similar tasks. The Parties will negotiate a scope of services and compensation therefor if and when the Secretary requests Phase D Services.

3. The Consultant represents that persons performing Services, including its employees and the employees of its subconsultants, if any, have the education, training, and experience necessary to perform the Services this Agreement requires in an accurate and timely manner. The Consultant has a valid Certificate of Authorization from, and individual employees are licensed by, the Kansas Board of Technical Professions as required by Kansas law. The Consultant represents that all personnel utilized in performance of Services have appropriate qualifications and certifications to perform Services.

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B. DEFINITIONS

1. Agreement. This Agreement for Engineering and Technical Services includes Articles A-L herein, as well as exhibits and attachments documents this Agreement incorporates by reference, Work Orders completed and executed by the Parties, as well as amendments thereof by CMS Change Orders and future supplemental agreements and other amendments in writing agreed to and signed by duly authorized representatives of the Parties.
2. Construction Contract. A written agreement between the Secretary and a Contractor, requiring the Contractor to perform the Construction Contract for a Project for which the Consultant is providing Services. The Construction Contract includes the following Contract Documents, all of which constitute one instrument and are incorporated by reference into this Agreement: proposal, Exploratory Work Documents, addenda, amendments, contract form, contract bond, Standard Specifications, Special Provisions, Project Special Provisions, general plans, detailed plans, the notice to proceed, material test methods, material test reports, material certifications, Part V of the KDOT Construction Manual, change orders, payment vouchers, guarantees, warranties, and other agreements, if any, that become required for construction and completion of a Project.
3. Construction Project. The specified location where a Contractor shall perform construction together with all improvements the Contractor shall be constructing under a Construction Contract.
4. Consultant. The engineering firm hereinabove identified as a Party to this Agreement.
5. Contractor. The individual, partnership, corporation, joint venture, or other legal entity performing the Construction Contract.
6. Documents. Written, printed papers and electronic files.
7. Exploratory Work Documents. Documents developed by KDOT, local governments, or the Consultant to determine a Project's subsurface conditions, engineering requirements, or both. These may include geotechnical foundation investigation reports; soils reports; geology reports; hydraulic investigations; hydrological investigations; bridge reports; earth work computations; boring logs; surveys; rock investigations; soils investigations; environmental investigations; building investigations; bridge investigations; and other geological, geotechnical, or design information for the Project.
8. FHWA. The Federal Highway Administration.
9. KDOT. The Kansas Department of Transportation and its authorized employees.
10. Manuals. The current version of the KDOT Bridge Design Manual, Design Manual, Construction Manual, Form Manual, CMS Procedures Manual, the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Secretary, American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways & Streets, Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, AASHTO LRFD Bridge Design Specifications and the AASHTO LRFD Bridge Construction Specification, and all other current relevant documents that KDOT has adopted and FHWA has approved for design, engineering and associated technical Services for the particular highway and/or structures or other systems contemplated by this Agreement.

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11. Notice to Proceed. A written notice from KDOT Division of Engineering and Design—Contract Section authorizing the Consultant to begin performance of Services.
12. Plans. Unless noted as “preliminary,” the Consultant-prepared and KDOT-approved plan profiles typical cross sections, and other detail sheets showing the location, character, dimensions, and details of a Contractor’s work on a Project, whether in electronic or hard copy (paper) form.
13. Project. The highway improvement Project for which the Consultant is performing Services.
14. Project Special Provisions. Documents that modify the Standard Specifications for a particular Construction Project.
15. Reports. Formal documents that detail or summarize information analyzed, generated or gathered for the Project or for a Construction Contract. Any document or information which is or should be produced by the exercise or practice of a technical profession, as defined in KSA 74-7001 *et seq.*, is considered a Report. Exploratory Work Documents are considered Reports.
16. Services. The engineering and associated technical services needed or required for the Consultant’s performance of this Agreement. Such Services are defined throughout the Agreement and with greater detail in Special Attachment No. 4, Scope of Services, and any supplemental agreements executed for changes in Services or for Services to be performed in later Phases.
17. Special Provisions. Documents that modify the Standard Specifications for a particular Construction Contract, such as details not covered by KDOT’s Standard Specifications, special fabrication or construction features.
18. Standard Specifications. The Kansas Department of Transportation *Standard Specifications for State Road and Bridge Construction* (current edition).

C. SECRETARY’S GENERAL RESPONSIBILITIES

1. The Secretary may engage the Consultant to perform Phase A, B, C, or D Services. For each Phase of Services for which the Secretary engages the Consultant under this Agreement, the Secretary will do the following.
 - a. Request the Consultant submit a proposal for specific Services and, when the scope, price (including fixed fee) and schedule for such Services have been agreed, such agreement shall be memorialized herein or by a Supplemental Agreement, a CMS Change Order or a Work Order executed by duly authorized representatives of the Parties.
 - b. Issue a written Notice to Proceed to the Consultant.
 - c. Furnish relevant existing highway plans and Exploratory Work Documents, if any, in the Secretary’s possession in accordance with Exhibit A hereto.
 - d. Furnish those Exploratory Work Documents the Secretary determines that KDOT should furnish to the Consultant, as set forth in Exhibit A hereto.

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- e. Furnish or make available all Manuals requested by the Consultant if unavailable online.
- f. Pay the Consultant according to Article H.

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

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

D. THE CONSULTANT'S GENERAL RESPONSIBILITIES

1. For all Services performed by the Consultant for any Phase under this Agreement, the Consultant shall be responsible for the following obligations.
 - a. Perform or furnish Services for such Phase in accordance with the project schedule as described in Special Attachments No. 4 relevant to the particular Phase and furnish all labor materials, equipment, supplies, transportation, and incidentals necessary to perform the Services. The Consultant represents that it is adequately staffed and suitably equipped to perform the Services in a timely manner and in conformance with this Agreement.
 - b. When appropriate, prepare two copies of a Work Order (Exhibit B), when the details thereof are agreed, for the Consultant's and Secretary's signature.
 - c. Prepare and furnish to the Secretary preliminary and final Reports, Plans and technical data and other deliverables referenced in Special Attachment No. 4, Scope of Services.
 - d. Prepare and furnish revisions to preliminary Reports, Plans and technical data the Secretary may request or the Consultant determines are needed to meet required design criteria/standards and Manuals.
 - e. Documentation and Deliverables.
 - i. Reports and other technical data prepared by the Consultant shall be submitted in an electronic form as follows: (i) in their native format; and (b) in the portable document format (.pdf). The Consultant shall confirm that the native formats intended for use by the Consultant are identical or compatible with those used by KDOT. Any data not identical or compatible shall be converted by the Consultant prior to delivery to KDOT.

- ii. Plans shall be submitted as follows: (i) in portable document format (.pdf) files; (ii) in the MicroStation format (.dgn) files; All electronic Plan files shall conform to the organization and other requirements set forth in the KDOT Graphic Standards Manual.

- f. Sign and seal as required by law. In accordance with applicable law, for performance of Services arising out of or related to this Agreement, the Consultant shall require: (a) the licensed professional engineer(s) responsible for preparing the Plans, or revisions thereof, to sign and seal such Plans or other documents; (b) the individual holding a license in a technical profession (whether professional engineer, surveyor, geologist, architect, landscape architect or otherwise) who is responsible in their professional capacity for preparing any Reports (or revisions thereof) to sign and seal such Reports; and (c) the licensed professional surveyor(s) responsible for conducting land surveying activities as defined in K.S.A. 74-7003(t) to sign and seal any real property descriptions, right of way descriptions, maps, plats, and other field records, or revisions thereof, that document survey results.

- g. Provide traffic control signing on or along any street or highway where the Consultant has crews working. The size, shape, color, and placement of all signs, as well as other worker safety measures, such as high visibility clothing, shall comply with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD).

2. The Consultant shall perform its Services according to relevant Manuals for design criteria and standards that KDOT has adopted and FHWA has approved for the particular highway and/or structures included in the Construction Project. The Consultant also may be required to perform some or all Services according to AASHTO design criteria/standards if the Secretary requires these standards in addition to KDOT's criteria/standards.

3. The Consultant shall have sole responsibility for the adequacy and accuracy of final Plans, Reports, technical data and all other Services. The Secretary's performance under this Agreement is intended to fulfill the Secretary's obligation to take those steps necessary to construct, improve, reconstruct, and maintain the state highway system and is not intended to fulfill the Consultant's obligations under this Agreement.

E. PROSECUTION AND PROGRESS

1. The Secretary assumes no obligation to pay for Services the Consultant performs on any Phase prior to KDOT's issuance of a Notice to Proceed for such Services.

2. The Consultant shall perform component Services in accordance with the schedule shown in Special Attachment No. 4, attached hereto. The Consultant also shall keep informed of changes to KDOT's milestone dates for right-of-way acquisition, utility relocations, and the Construction Contract letting.

3. At monthly intervals, the Consultant shall report actual progress to the KDOT Division of Engineering and Design – Contract Section on the "Payment Request & Progress Report" form.

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4. If the Secretary or a third party performs in a manner that increases the Consultant's time for performance, then the Consultant shall notify the KDOT Project Manager and KDOT Division of Engineering and Design – Contract Section and KDOT Bureau of Road Design of such delay. If the delay was not caused by the Consultant, then the Secretary will either pay the Consultant to accelerate the Services to overcome the delay or grant an extension of time for the delay. The Secretary has sole discretion to give a time extension rather than pay acceleration costs.
5. The Consultant recognizes that its actions or inactions may adversely impact or affect KDOT as well as other third parties, including but not limited to other consultants in plan development, any Contractor on the Construction Project, public utilities, private utilities, public landowners, private landowners, or others. The Consultant shall do, or require to be done, all things reasonably necessary to:
 - (a) avoid or mitigate unavoidable delays, costs, losses or damages which may arise out of, be caused by or attributed to the Consultant's actions or inactions in performance of Services under this Agreement and
 - (b) effectively coordinate with KDOT and third parties so as to enable KDOT to implement the Project in a timely and cost-effective manner.
6. The Secretary, the Consultant, or both may request conferences to discuss the Consultant's Services or other relevant Project issues. The Parties will hold these conferences in the KDOT Headquarters Office in Topeka, Kansas unless otherwise agreed.
7. The Consultant's Services are considered complete on a Phase-by-Phase basis.
8. At the Secretary's request, the Consultant shall attend conferences or meetings that occur during performance of a Construction Contract. The Secretary may hold such conferences/meetings to discuss the Consultant's Services, the Contractor's operations, third parties' concerns, or other relevant Project or Construction Contract issues.
9. At the Secretary's request, the Consultant shall make revisions to Plans, Reports and technical data.
10. The Consultant shall provide additional Services the Secretary may require for claims or litigation matters during or after Construction Contract performance.
11. Except as provided in Paragraph 5, the Secretary will pay the Consultant for additional Services the Consultant provides under Paragraphs 8 through 10 as follows:
 - a. An amount that the Secretary and the Consultant agree upon and memorialize in writing as an amendment signed by the duly authorized representative of each Party; or
 - b. The reasonable value of the additional Services if the Parties cannot agree upon the costs for the additional Services.
12. The Secretary will not pay the Consultant for any costs the Consultant incurred because of the Consultant's negligent acts, errors, or omissions or because of the Consultant's failure to comply with its obligations under this Agreement.

F. DISPUTED MATTERS

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

G. TERMINATION OF AGREEMENT

1. The Secretary may terminate this Agreement, in whole or in part, upon ten (10) days advance written notice delivered to the Consultant.
 - a. If the Secretary terminates this Agreement in whole or in part, for the Secretary's own convenience, then the Secretary will pay the Consultant the Consultant's actual direct costs incurred before the termination date and the Consultant's fixed fee as Article H provides.
 - b. If the Secretary terminates this Agreement, in whole or in part, because of the Consultant's failure to comply with its obligations or because of the Consultant's negligent acts, errors, or omissions, then the Secretary will pay the Consultant the reasonable value of Services performed before the termination date. In evaluating the reasonable value of Services performed, KDOT may adjust the fixed fee to reflect the percentage of Services the Consultant has completed.
2. The Consultant may terminate this Agreement upon ten (10) days advance written notice delivered to KDOT. The Consultant will send the notice to KDOT Division of Engineering and Design – Contract Section.
3. The Secretary or the Consultant may or may not claim the other Party breached the contract when exercising their right to terminate this Agreement. Termination, in any case, does not prevent the Secretary from recovering damages for the Consultant's failure to comply with its obligations under this Agreement or for the Consultant's negligent acts, errors, or omissions or prevent the Consultant from seeking payment for additional Services under Section E, paragraph 4.
4. Regardless of which Party terminates this Agreement, the Secretary may require the Consultant to complete some of the remaining Services. The Consultant's obligations to perform shall not end until such Services are completed.
5. The Secretary is not obligated to terminate this Agreement as a condition precedent to contracting with "other consultants" as described and permitted in Section C, paragraph 3. The Consultant shall have no breach of contract claim, interference with contract claim, or other claim if the Secretary contracts with "other consultants" as defined and permitted in Article Section C, paragraph 3.

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H. PAYMENT

1. The Secretary will compensate the Consultant for Phase ___ Services on the basis of the Consultant's actual cost plus a fixed fee of \$ _____ as detailed in Special Attachment No. 4, Scope of Services, subject to the upper limit of compensation of \$ _____ and any disallowed costs.
2. Subject to the upper limit of compensation and disallowed costs for each Phase of the Services, the Secretary will pay the Consultant
 - a. Actual, direct costs incurred in performing the Services such as employee labor (including fringe benefits and overtime), contract labor, approved subcontractor/subconsultant costs, equipment costs, transportation costs, in-state or approved out-of-state lodging costs, and meal expenses associated with overnight travel (Special Attachment No. 4A);
 - b. Associated overhead; and
 - c. The fixed fee identified for the applicable Phase of Services.
3. The Consultant shall furnish to the KDOT Division of Engineering and Design – Contract Section, for the Secretary's approval, a written request to incur overtime charges before incurring those charges. The Secretary shall not compensate for overtime if the Consultant failed to furnish this notice and obtain the Secretary's prior approval. If approved, then the Secretary may pay straight-time overtime or premium overtime at 1.5 times the approved hourly rate for the employee performing the overtime.
4. The Consultant shall submit its current indirect (overhead) cost rate as soon as possible but in no event later than six (6) months after the Consultant's fiscal year ends. The Consultant's indirect (overhead) cost rate is established pursuant to 23 CFR 172.11(b)(1). The Secretary may audit the Consultant's overhead rate yearly. The Secretary may require the Consultant to provide certified financial statements or other documents substantiating the Consultant's overhead rates. If the overhead rate increases or decreases, then the Secretary may adjust previous payments to reflect the actual overhead rate for the relevant fiscal year.
5. Subject to the upper limit of compensation, the Secretary will pay for additional Services according to this Agreement.
6. Initially, the Parties shall identify the upper limit of compensation for each Phase of Services. The Parties may thereafter adjust the upper limit of compensation through a CMS Change Order or Supplemental Agreement. The Consultant shall notify the KDOT Division of Engineering and Design – Contract Section before the Consultant's Services exceed the upper limit of compensation so the Parties may consider an adjustment. The Secretary has no obligation to pay costs that exceed the upper limit of compensation unless and until any adjustment thereof is agreed in writing between the Parties.
7. To initiate payment for Services, the Consultant shall complete and submit to the KDOT Division of Engineering and Design – Contract Section an itemized billing on KDOT's Payment Request Form or other document the Division approves. The Consultant shall not submit a billing more frequently than once a month or for less than \$500.00. For each billing cycle the Consultant shall:

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

In cases where the Consultant submits billings which include costs incurred by a subconsultant, the same requirements of subparagraphs a. through e. above shall apply.

8. The Secretary will pay for the Services within 30 days after receiving, reviewing, and generally approving the Consultant's itemized billing and accompanying documentation that paragraph 7 above and Special Attachment No. 4A requires. This approval does not prevent the Secretary from adjusting a previous payment(s) for disallowed costs discovered after the Secretary has made that payment.

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

10. For Services performed in each Phase, accumulated partial payments on each Phase shall not exceed ninety-five percent (95%) of the upper limit of compensation for that Phase.

11. The Consultant shall submit its final invoice for final payment on each Phase of the Project following completion of Services on that Phase, but no later than one hundred eighty (180) days from completion of such Phase of Services. The Consultant shall clearly designate and label such invoice as "final" so as to enable KDOT to proceed to close out such Phase in accordance with its own internal procedures.

12. The Secretary will make final payment for each Phase within ninety (90) days after the Secretary or the Secretary's representative completes a final audit of the Project.

13. The KDOT Division of Engineering and Design – Contract Section may change the Consultant's Services by increasing, decreasing, or otherwise modifying the Services this Agreement requires.

14. The Consultant may request payment for increased or modified Services as "extra Services." If the

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

15. If the KDOT Division of Engineering and Design decreases the Services or decreases the expected duration of Services, then the Consultant shall have no claim for additional compensation. The Secretary may decrease the Consultant’s fixed fee if the Secretary demonstrates that the decreased Services substantially decrease the original amount of Services. Such decreases may include eliminating structures, decreasing the Construction Project scope, decreasing Construction Project termini, or changing the duration of Services, among others.

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

I. ADDITIONAL PROVISIONS

1. Upon completion or termination of each Phase of the Project, the Consultant shall furnish to the KDOT Bureau of Road Design all Documents KDOT provided to the Consultant that the Consultant does not need for subsequent Phases.

2. Upon completion or termination of all Phases for which the Secretary retains the Consultant, the Consultant shall furnish to the KDOT Bureau of Road Design all original Documents the Consultant compiled and prepared in performing its Services. Without limitation, these Documents include all Reports, Plans, drawings, CADD files, specifications, work flows, procedures, and other Consultant-generated or Consultant-developed documents pertaining to the Project.

- a. Any Plans, procedures, specifications, engineering calculations, information, Reports or any other work products developed by the Consultant as deliverables to KDOT as part of the Services performed and paid for under this Agreement shall become the property of KDOT, but the Consultant shall have the right to retain copies thereof for its own internal recordkeeping and for the purposes of performing Services for the Project.
- b. With regard to software and systems used in the performance of Services but which are (1) neither developed under this Agreement nor originally obtained from or through KDOT and (2) expressly designated in this Agreement as proprietary to Consultant, its subconsultants or third parties, Consultant (or such designated subconsultant or third party, as the case may be) retains ownership rights to such proprietary software or systems and Consultant shall grant to or obtain for KDOT a non-exclusive, royalty-free license for KDOT to use such software and systems for the Project and the construction and maintenance of, as well as future improvements to, the Project.

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- c. Upon completion or termination of each Phase of the Project and at the Secretary's request, the Consultant shall furnish to the KDOT Bureau of Road Design copies of all correspondence, memoranda, instructions, receipts, invoices, e-mails, and any other Documents pertaining to the Project. These Documents are KDOT's property.

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

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

5. The Consultant shall keep all Project Documents arising out of or related to performance of Services for a five-year retention period beginning with the Consultant's final payment date. The final payment date is the voucher date on the Secretary's last payment to the Consultant under this Agreement. This final payment occurs after the Consultant submits its request for final payment and KDOT has completed the final audit. The Consultant shall make all Documents available at the Consultant's principal office. If at the end of the five-year retention period, other pending matters are still open the Consultant shall retain all Project Documents until those matters are closed.

6. The Secretary, FHWA, the United States Department of Transportation's Inspector General, the Comptroller General of the United States, and their authorized representatives may inspect and review all Documents pertaining to the Consultant's Services during the Consultant's performance and the five-year retention period.

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

8. Within three (3) years after the Consultant has submitted its invoice for final payment on each Phase of the Project, the Secretary or the Secretary's authorized representatives may perform a final audit of the Consultant's Project costs conducted according to generally accepted governmental auditing standards and in compliance with cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). Without limitation, the auditors may determine whether costs incurred were actual and necessary, reasonable, allowable, and in compliance with regulations and whether the compensation did not exceed the applicable upper limit of compensation. The auditors may review all subconsultant records and costs as well. The Consultant shall reimburse the Secretary for overpayments.

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9. The Consultant shall include the provisions of Articles I in all subconsultant agreements.
10. This Agreement includes the items referenced in Article B, paragraph 1.
11. The Exhibits and Attachments identified below are essential parts of and incorporated into this Agreement.
 - a. If there is a conflict among or between the various terms set forth or referenced in the documents comprising the Agreement, then the order of precedence shall be: (1) Special Attachment 1A; (2) Articles A through K of the Agreement; and (3) Exhibits and other Attachments. If either Party discovers a conflict or inconsistency among or between the various provisions comprising this Agreement (including provisions in documents referenced or incorporated by reference into this Agreement), then such Party shall notify the other Party and the Parties shall thereafter cooperate with each other to resolve the conflict or inconsistency in an equitable manner in conformance with the purpose and intent of this Agreement.
 - b. The Exhibits and Attachments are:

Exhibit A, Items Furnished by the Secretary (to be completed by the Secretary's representatives)

Exhibit B, Work Order Form

Special Attachment No. 1, US DOT Standard Title VI Assurances

Special Attachment No. 1A, Contractual Provisions Attachment (DA 146a)

Special Attachment No. 2, Certification Regarding Lobbying
(to be completed and signed by the Consultant).

Special Attachment No. 3, Verification as to History and Current Status Regarding Eligibility
(to be completed and signed by the Consultant).

Special Attachment No. 3A, Contractual Services with Current Legislator or Legislator's Firm
(to be completed and signed by the Consultant).

Special Attachment No. 4, Scope of Services (per each Phase)

Special Attachment No. 4A, Consultant Reimbursement for Actual Direct Costs (Travel, etc.)

Special Attachment No. 5, Electronic Data Interchange

Special Attachment No. 6, KDOT Consultant Standard of Care Policy, signed 1/31/14

Special Attachment No. 7, Certification (for Final Indirect (Overhead) Cost Rate)
(on file with KDOT)

Special Attachment No. 8, Tax Clearance Certificate
(to be obtained and submitted by Consultant and subconsultants)

Special Attachment No. 9, Not Used

Special Attachment No. 10, Policy Regarding Sexual Harassment

Special Attachment No. 11, Certification – Boycott of Israel Prohibited

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

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

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

15. This Agreement creates no third party beneficiaries.

16. Kansas law governs this Agreement.

17. Subcontracts and Assignments.

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

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

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

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

J. ERRORS AND OMISSIONS; INDEMNIFICATION; INSURANCE

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

2. The Consultant shall pay for or reimburse the Secretary for damages and costs the Secretary has incurred or will incur, because the Consultant failed to comply with its obligations under this Agreement. These damages include personal injury to KDOT employees, damage to KDOT property, and economic loss whether the economic loss arises in contract, tort, or equity. Economic loss encompasses direct and consequential damages Kansas law permits the Secretary to recover, including monies the Secretary pays or owes to construction contractors, monies the Secretary pays or owes to consulting firms, delay damages, or other damages arising from the Consultant's failure to comply with its obligations. This

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Agreement does not authorize third parties to seek recovery as third party beneficiaries of this Agreement or in any other capacity.

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

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

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

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

Project No. _____

K. CONFLICT OF INTEREST

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

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

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

L. EFFECTIVE DATE; REPRESENTATION OF AUTHORITY

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

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

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

| | |
|--------------------------------------|---|
| Consultant [Consultant firm name] | Julie L. Lorenz Secretary of Transportation Kansas Department of Transportation |
|--------------------------------------|---|

By: _____
(Signature) (Date)

By: _____
(Signature) (Date)

Name: _____
(printed)

Burt Morey, PE
Deputy Secretary and
State Transportation Engineer

Title: _____