

CITY'S ORIGINAL

Agreement No. 20-10

CONTRACT FOR FEDERAL-AID ROAD CONSTRUCTION PROJECT NON-FEDERAL-AID CONSTRUCTION ENGINEERING INSPECTION BY CITY (CITY ADMINISTERED PROJECT)

**PROJECT NO. 46 N-0374-01
CITY OF OVERLAND PARK
JOHNSON COUNTY**

CMS Contract No. _____

This Agreement entered into and is effective the date signed by the Secretary or designee, by and between the City of Overland Park, hereinafter referred to as the "LPA" (Local Public Authority) as principal, and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation, hereinafter referred to as the "Secretary," and an agreement between them dated August 20, 2009, hereinafter referred to as the Primary Agreement. The LPA and the Secretary are collectively referred to as the "Parties."

RECITALS:

WHEREAS, The Secretary and the LPA have agreed the LPA shall provide the construction engineering inspection services in accordance with rules and guidelines based on the inspection procedures approved by the Secretary; for a Project consisting of 1.50 miles of Grading and Surfacing located on Antioch Road from I-435 to 119th Street, and

WHEREAS, The Secretary and the LPA desire to set forth their understanding and agreements relating to the construction engineering inspection services and allocation of cost of said Project.

NOW, THEREFORE, in consideration of the premises and to secure the approval for construction inspection of the project, the Parties hereto mutually agree as follows:

1. The LPA agrees to provide the construction engineering inspection services in accordance with the Project Procedures Manuals for the City of Overland Park, which the LPA has provided to the Secretary for prior approval. Any subsequent changes to the Project Procedures Manuals by the LPA during the construction engineering inspection of the Project will require prior approval of the changes by the Secretary.
2. The LPA will require all personnel comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8, Fluorescent Vests, as a minimum, while inspection is being performed.
3. The LPA agrees to be responsible for all costs incurred by the LPA for the construction engineering inspection services.
3. It is also understood and agreed the project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate and other Special Attachments (Index provides

List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

- 4. The Field Engineer for the KDOT will be Mr. Ruben Noguera, P.E., whose work address is 1290 South Enterprise, Olathe, Kansas 66061 and work telephone is 913-764-4525.
- 5. The Project Engineer/Project Manager for the LPA will be Mr. Wayne Gudenkauf, P.E., Certification Number 1556 (expiration date is 1/24/2011), whose work address is 8500 Santa Fe Drive, Overland Park, Kansas 66212 and work telephone is 913-895-6042.

IN WITNESS WHEREOF: The Parties hereto have caused this Agreement to be signed by their duly authorized officers. It is further understood the Primary Agreement, this Agreement and all other agreements entered into under the provisions of this Agreement shall be binding upon the Parties to this Agreement and their successors in office.

RECOMMENDED FOR APPROVAL:

APPROPRIATE LOCAL OFFICIAL:

Overland Park City Engineer

Mayor of City of Overland Park

ATTEST:

Overland Park City Clerk

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

APPROVED AS TO FORM:

Tammy M. Owens
Attorney for the City

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

INDEX OF ATTACHMENTS

Special Attachment No. 1

Civil Rights Act of 1964
Rehabilitation Act of 1973
Americans With Disabilities Act of 1990
Age Discrimination Act of 1975
Executive Order 12898 of 1994

Special Attachment No. 2

Listing of KDOT Certified Inspectors

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. 3555) 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 insure 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 seven "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "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 relative to nondiscrimination in federally-

assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which 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 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 contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly 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 contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor 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 this Order.
- (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.

