

PROJECT NO. 35-46 KA-6540-02,03,04
ACNH-A654(002),(003),(004)
ROADWAY RECONSTRUCTION
OLATHE, KANSAS

A G R E E M E N T

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Olathe, Kansas** (“City”), **collectively**, the “Parties.”

RECITALS:

- A. The Secretary has authorized a Heavy Preservation Project, on I-35 and Santa Fe, a city connecting link for the State Highway System.
- B. 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.
- C. The Secretary desires to construct the Project through the use of state and/or federal funds, and the City agrees to the Project as further described in this Agreement.

NOW THEREFORE, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Olathe, Kansas, with its place of business at 100 E. Santa Fe Street, Olathe, Kansas 66061.
- 3. **“City Connecting Link”** means a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city’s limits and is designated as part of the national system of Interstate and defense highways.

4. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving, or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
5. **“Construction Contingency Items”** means unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
6. **“Construction Engineering” or “CE”** means inspection services, material testing, engineering consultation, and other reengineering activities required during Construction of the Project.
7. **“Consultant”** means any engineering firm or other entity retained to perform consulting or design services for the Project.
8. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
9. **“Design Plans”** mean design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
10. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
11. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
12. **“Heavy Preservation Project”** means a roadway reconstruction project which improves the pavement surface and/or subsurface conditions. Heavy Preservation Projects may be funded by state funds, federal funds, or a combination of both and do not require a local match.
13. **“KDOT”** means the Kansas Department of Transportation, an agency of the State of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
14. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.

16. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge, and road construction projects, as reasonably determined by the Secretary.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
18. **“Preliminary Engineering” or “PE”** means pre-Construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project KA-6540-02, -03, -04” or “Project KA-6540”** means all phases and aspects of the construct endeavor to be undertaken by Secretary, being: Improvements to I-35 from Old 56 Highway/I-35 junction north to 0.65 miles north of 119th/I-35 interchange, the widening of the Old Highway 56 bridge #317, and replacement of I-35 pavement and is the subject of this Agreement. Unless otherwise noted and/or specified the word “Project” refers to Project KA-6540.
20. **“Project KA-6364-01, -02” or “Project KA-6364”** means all phases and aspects of the construction endeavor to be undertaken by the City, being: new interchange at I-35/Santa Fe, possible I-35 improvements from KA-6540-02,-03,-04, and Santa Fe corridor improvements, and is the subject of this Agreement.
21. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
22. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
23. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
24. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.
25. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, including fire and police signal systems which directly or indirectly serve the public.

ARTICLE II

FUNDING:

1. **Funding.** The table below reflects the funding commitments of each Party. The Participating Costs of Construction include unforeseeable elements of cost within the defined Project scope identified after the Construction phase commences (“Construction Contingency Items”). The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change. The Secretary’s financial contribution may be paid from state or federal funds or a combination thereof.

Funding Source	Design Engineering	Right-of-Way Acquisition	Utility Relocations	Construction Costs	Construction Engineering and Inspection	Total	% Cost
OLATHE	\$ 9,027,487	\$ 26,855,836	\$ 4,075,301	\$ -	\$ -	\$ 39,958,624	20.1%
KDOT	\$ -	\$ 49,875,124	\$ -	\$ 8,179,635	\$ 7,157,180	\$ 65,211,939	32.7%
FEDERAL (Non-Grant)	\$ -	\$ -	\$ -	\$ 94,065,799	\$ -	\$ 94,065,799	47.2%
FEDERAL (MEGA\INFRA Grant)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0.0%
TOTAL	\$ 9,027,487	\$ 76,730,960	\$ 4,075,301	\$ 102,245,434	\$ 7,157,180	\$ 199,236,361	100.0%
TOTAL CHECK	\$ 9,027,487	\$ 76,730,960	\$ 4,075,301	\$ 102,245,434	\$ 7,157,180	\$ 199,236,361	

2. **Availability of Funds.** The Parties understand that the funds listed in the funding table above are a combination of available for funding for Project KA-6540 (KA-6540-02; KA-6540-03; and KA-6540-04) and Project KA-6364, including its two phases (KA-6364-01 and KA-6364-02). The Parties understand and agree that the amounts and percentages listed in the funding table are subject to change and shall not be binding on the Parties beyond the Parties mutual understanding that the Parties shall be responsible for contributing funds to each phase of Project KA-6540 and/or KA-6364.

ARTICLE III

SECRETARY RESPONSIBILITIES:

1. **Indemnification by Contractors.** The Secretary will 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, or suppliers. 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.
2. **Letting, and Administration.** The Secretary will prepare the Design Plans, Let the contract for the Project, administer Construction of the Project, and administer the payments due the Contractor, including any portions borne by the City for the Project.
3. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the City acquire Right of Way in accordance with the laws and with procedures established by KDOT’s Bureau of Right of Way and the

Office of Chief Counsel and as required by FHWA directive such that the City may obtain participation of federal funds in the cost of the Project.

4. **Utilities.**

(a) **Utility Relocation.** The Secretary will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing Utilities necessary to construct the Project in accordance with the final Design Plans. New or existing utilities that have to be installed, moved or adjusted will be located or relocated in accordance with the current version of the **KDOT Utility Accommodation Policy** (UAP), as amended or supplemented.

(b) **Cost of Relocation.**

(i) If the City has a population of less than 2,501 (based on the U.S. Bureau of Census-2010 Census), the Secretary agrees to be responsible for the expense to remove or adjust City owned Utilities located on public Right of Way as necessary to construct the Project in accordance with the final Design Plans. The payment of such expense by the Secretary shall be by a separate Utility adjustment agreement between the Secretary and the City.

(ii) If the City has a population of more than 2,500 (based on the U.S. Bureau of Census-2010 Census), the Utility owners shall be responsible for the expense to remove or adjust all Utility facilities on public Right of Way as necessary to construct the Project in accordance with the final Design Plans. The expense of removal or adjustment of Utilities located on private easements shall be reimbursed to the Utility owners by the Secretary. The payment of such expense by the Secretary shall be by separate Utility adjustment agreement between the Secretary and the Utility owners.

ARTICLE IV

CITY RESPONSIBILITIES:

1. **Legal Authority.** By his or her signature on this Agreement, the signatory certifies he or she has legal and actual authority as representative and agent for the City to enter into this Agreement on its behalf. The City agrees to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.
2. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the City will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, subcontractors or its consultants. The City shall not be required to defend, indemnify, or

hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

3. **Indemnification by Contractors.** The City agrees 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. **Authorization of Signatory.** The City shall authorize a duly appointed representative 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.
5. **Removal of Encroachments.** The City shall 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 within its jurisdiction as shown on the final Design Plans for this Project. It is further agreed all such Encroachments will be removed before the Project is advertised for Letting; except the Secretary may permit the Project to be advertised for Letting before such Encroachment is fully removed if the Secretary determines the City and the owner thereof have fully provided for the physical removal of the Encroachment and such removal will be accomplished within a time sufficiently short to present no hindrance or delay to the Construction of the Project.
6. **Future Encroachments.** Except as provided by state and federal laws, the City agrees it will not in the future permit Encroachments upon the Right of Way of the Project, and specifically will require any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed a distance from the Right of Way line no less than of the distance permitted by the National Fire Code.
7. **Financial Obligation.** The City is responsible for the contribution as set forth in Article II, 1 above. The City shall deposit with the Secretary its estimated share of the total Project expenses based on 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 forty-five (45) days after the Letting date.
8. **Audit.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular") Further, the City agrees to the following provisions:

- a. **Audit.** It is the policy of the Secretary to make any final payments to the City for services related to the Project in a timely manner. The Audit Standards set forth in 2 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” and specifically the requirements in Subpart F, 2 C.F.R. §200.500 *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. §200.500 *et seq.*
 - b. **Audit Report.** The Secretary may pay any final amount due for the authorized work performed based upon the City’s most recent Single or Program Specific Audit Report “(Audit Report”) available and a desk review of the claim by the Contract Audit Section of KDOT’s Bureau of Fiscal Services. The City, by executing this Agreement, acknowledges the final payment is subject to all single or program specific audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree once the Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Audit Report for items which are declared as not eligible for reimbursement. The City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.
 - c. **Agency Audit.** If the City is not subject to the Audit Standards set forth in 2 C.F.R. Part 200, the Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the City will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If the audit reveals payments have been made with federal funds by the City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.
9. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

ARTICLE V

FEDERAL REQUIREMENTS:

1. **Anti-Lobbying.** If the total value of this agreement exceeds \$100,000.00, a **Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities Attachment** will be attached and made a part of this Agreement. Such certification must state the recipient or subrecipient of a federal grant will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. 2 C.F.R. § Pt. 200, App. II.

2. **Debarment & Suspension.** If the value of this Agreement exceeds \$25,000.00, it is a covered transaction for purposes of 2 C.F.R. Parts 180 and/or 1200. By signature on this Agreement, the City and County verify that neither it, nor its agents or employees, are presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any federal department or agency as reflected in the System for Award Management (SAM). Exec.Orders No. 12549 and 12689; 2 C.F.R. § 200.213.
3. **System for Award Management.** The City and County have registered with the System for Award Management (<http://www.sam.gov/>), which provides a Unique Entity Identifier (SAM), and shall maintain such registration at all times during which it has active federal awards.
4. **Buy America Compliance.** The Parties agree to comply with the Buy America requirements of 23 C.F.R. § 635.410, as applicable, when purchasing items using Federal funds under this Agreement. Buy America requires the Parties to purchase only steel and iron produced in the United States, unless a waiver has been granted by FHWA or the product is subject to a general waiver. Costs for applicable materials which are not certified either compliant or under waiver will not be reimbursed. Buy America requirements apply to all contractors/subcontractors and should be incorporated through appropriate contract provisions as needed.
5. **Prohibition on Certain Technologies.** All Parties agree that they will comply with 2 C.F.R. §§ 200.216 and 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds to 1) procure or obtain; 2) extend or renew a contract to procure or obtain, or; 3) or enter into a contract to procure or obtain telecommunication or video surveillance equipment, services, or systems produced by: Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); and Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Any expenditures for such telecommunication or video surveillance equipment, services or systems are unallowable costs and will not be reimbursed.
6. **Audit Requirements.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular"). The Audit Standards set forth

in 2 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” and specifically the requirements in Subpart F, 2 C.F.R. § 200.500, *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. § 200.500, *et seq.*

- a. Agency Audit. The Secretary and/or the Federal Highway Administration (FHWA) may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the party receiving the request will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement.

ARTICLE VI

GENERAL PROVISIONS:

1. Incorporation of Design Plans. The final Design Plans for the Project are by this reference made a part of this Agreement.
2. Traffic Control. The Parties agree to the following with regard to traffic control for the Project:
 - (a) Temporary Traffic Control. The Secretary shall determine in consultation with the City the manner in which traffic is to be handled during Construction. Before the final Design Plans have been completed, detour routes and street closings, if necessary, shall be agreed upon by authorized representatives of the City and the Secretary, and noted on the final Design Plans. If revisions to the traffic handling plan are proposed during the progress of Construction, the City and the Secretary shall approve such revisions before they become effective.
 - (b) Permanent Traffic Control. 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, must conform to the latest version of the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Secretary.
3. City Ordinances. The Secretary is not required to follow any City zoning ordinances in the design, Construction, or maintenance of the Project.
4. City Connecting Link. The Parties entered into an agreement covering routine maintenance of the City Connecting Link for portions of I-35 within the city limits. It is the Parties’ intention that the agreement for routine maintenance shall remain in full force and effect and the mileage set out in the City Connecting Link maintenance agreement is not affected by this Agreement.

5. **Maintenance.** When the Project is completed and final acceptance is issued, the Parties will, at their own cost and expense, maintain the Project as described in both the pre-existing City Connecting Link and **Appendix A** (see attached Appendix). Appendix A shall not supersede the City Connecting Link. Appendix A shall serve to clarify maintenance responsibilities that may or may not be contemplated by the City Connecting Link. The Parties further agree that any landscaping and/or upgraded aesthetic features are the responsibility of the City.
6. **Civil Rights Act.** The **Civil Rights Act Attachment** pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
7. **Contractual Provisions.** The Provisions found in the current version of the **Contractual Provisions Attachment (Form DA-146a)**, which is attached hereto, are incorporated into and made a part of this Agreement.
8. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.
9. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.
10. **Binding Agreement.** 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.
11. **No Third-Party Beneficiaries.** No third-party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
13. **Severability.** If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

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

ATTEST:

THE CITY OF OLATHE, KANSAS

CITY CLERK

(Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By: _____
Greg M. Schieber, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

INDEX OF ATTACHMENTS

- ☒ Appendix A
- ☒ Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities
- ☒ Civil Rights Act
- ☒ Contractual Provisions Attachment (DA-146a)

*Note – If left unchecked, then inapplicable.

MAINTENANCE - APPENDIX A

Roadway Surface *

- KDOT
- City of Olathe

*Includes snow removal

County 46 (Johnson)
Existing Bridges 320 & 321
Proposed Bridges - TBD
I-35 Exit 218

Drainage and retaining walls
within the interchange, ramps,
and fenced area - KDOT
Drainage retaining walls
associated with blue areas -
City

KDOT roadway related I-35 signing including guidance
and route markers - KDOT
Local signing - City

Tower lighting – KDOT
Street lighting - City

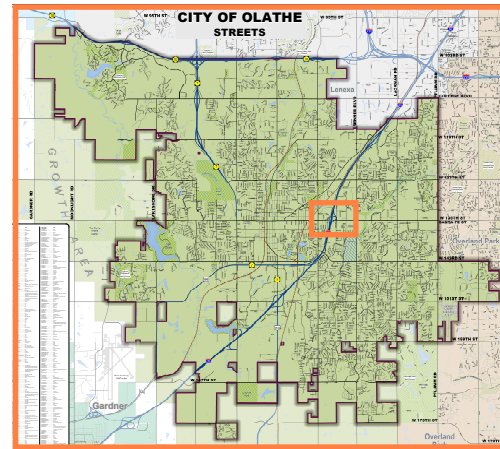
Deck surface and approaches potholes/patching
(including sidewalks on deck) – City
Deck overlays replacement and structure (including
sidewalks on deck) – KDOT

Landscaping and aesthetic
upgraded features - City

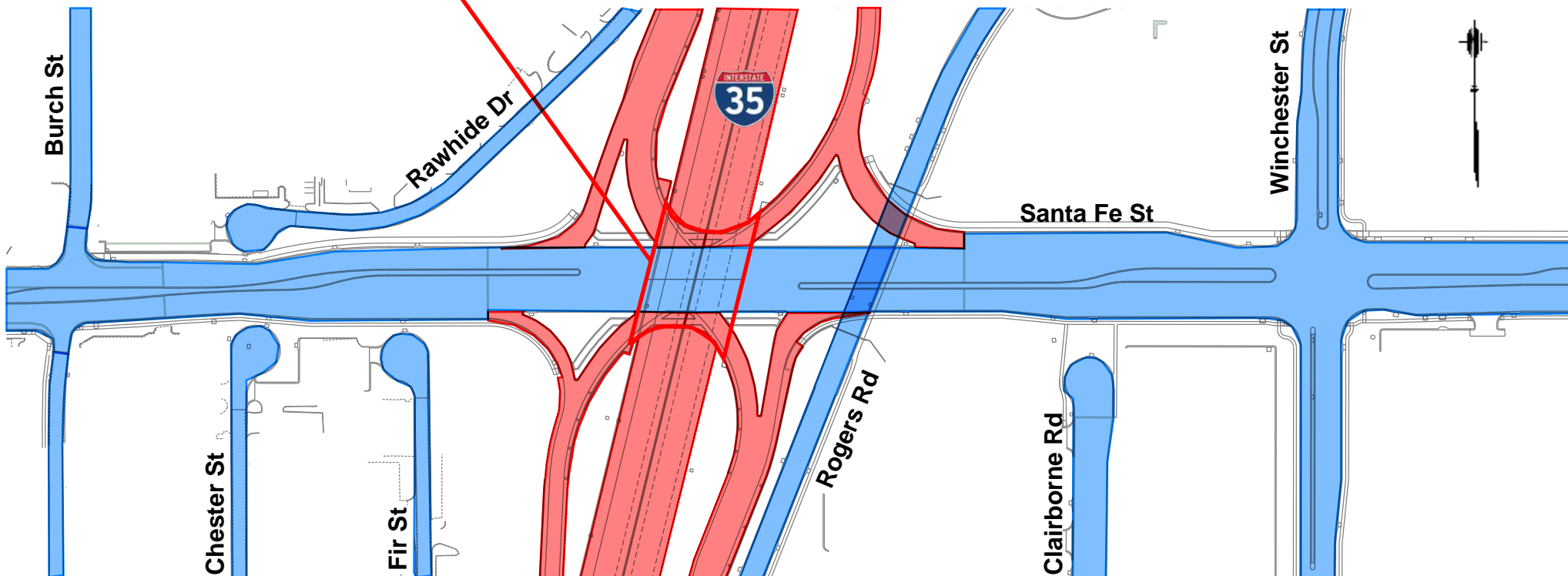
Sidewalks and median islands - City

Signals - City

Mowing within I-35 fenced area - KDOT



City of Olathe Map (Detailed)
<https://www.olatheks.gov/government/maps-gis/map-prints-downloads>



MAINTENANCE - APPENDIX A

Roadway Surface *

- KDOT
- City of Olathe

*Includes snow removal

KDOT roadway related I-35 signing including guidance and route markers - KDOT
Local signing - City

Tower lighting – KDOT
Street lighting - City

Deck surface and approaches (potholes/patching) – KDOT
Deck overlays and structure – KDOT

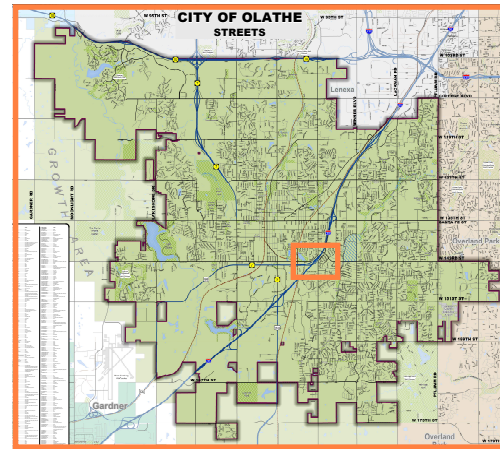
County 46 (Johnson)
Existing Bridge 317
I-35 Exit 217

Drainage within the interchange, ramps, and fenced area - KDOT

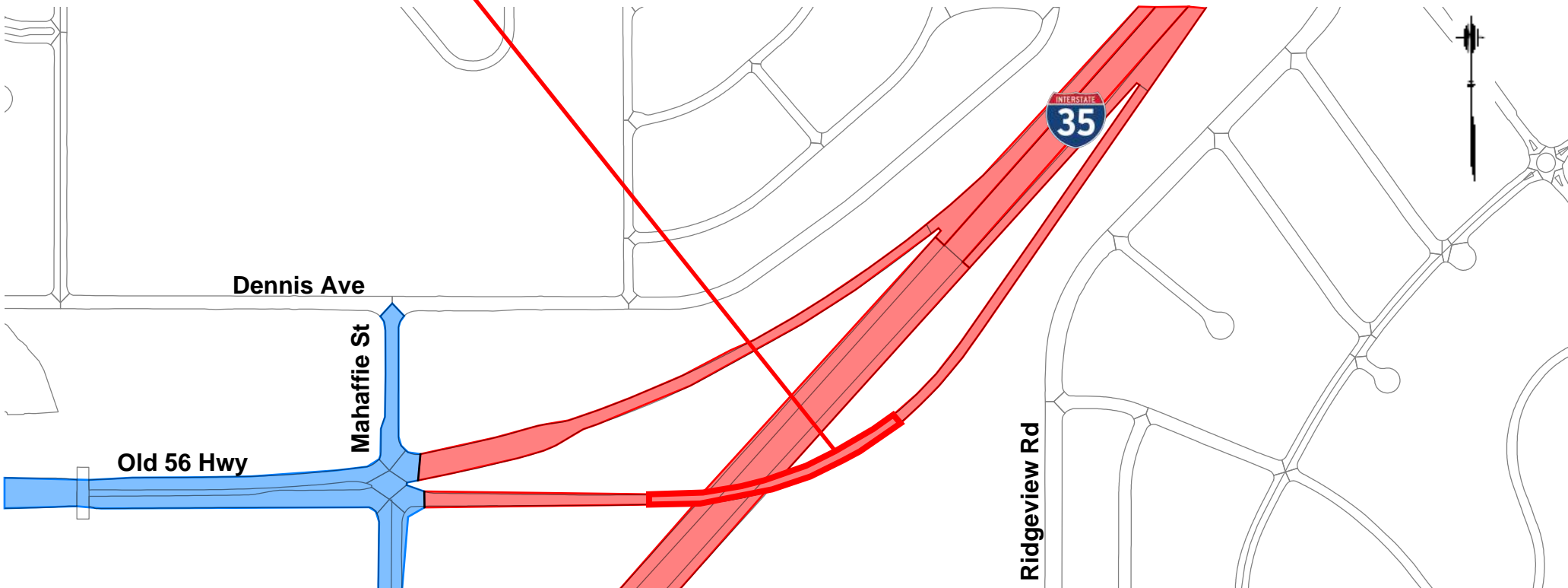
Sidewalks - City

Signals - City

Mowing within I-35 fenced area - KDOT



City of Olathe Map (Detailed)
<https://www.olatheks.gov/government/maps-gis/map-prints-downloads>



**Federal Funds Lobbying Certification Attachment
Required Contract Provision**

Definitions

1. **Designated Entity:** An officer or employee of any agency, a Member of Congress or any state legislature, an officer or employee of Congress or any state legislature, or an employee of a Member of Congress or any state legislature
2. **Federal Grant:** An award of financial assistance by the Federal government (Federal Aid Highway Program is considered a grant program)
3. **Influencing (or attempt):** Making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of any Federal grant
4. **Person:** An individual, corporation, company, association, authority, firm, partnership, society, state or local government
5. **Recipient:** All contractors, subcontractors or subgrantees, at any tier, of the recipient of fund received in connection with a Federal grant.

Explanation

As of December 23, 1989, Title 31 U.S.C. (new) Section 1352 limits the use of appropriated Federal funds to influence Federal contracting. Under this new section no appropriated funds may be used by the recipient of a Federal grant to pay any person to influence or attempt to influence a designated entity in connection with the naming of a Federal grant or the extension, renewal, amendment or modification of any grant. These restrictions apply to grants in excess of \$100,000.00. Submission of this Certification is required for participation in this Project by Federal Law. For each failure to file, a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 may be imposed.

Note: If funds other than appropriated Federal funds have or will be paid to influence or attempt to influence a designated entity it must be reported. If required, the reporting shall be made on KDOT Form No. 401, "Disclosure of Lobbying Activities", in accordance with its instructions. KDOT Form No. 401 is available through the Bureau of Design.

THE ABOVE DEFINITIONS, EXPLANATION AND NOTE ARE ADOPTED AND INCORPORATED BY REFERENCE IN THIS CERTIFICATION FOR ALL PURPOSES THE SAME AS IF SET OUT IN FULL IN IT.

The maker of this Certification states that it has been signed on the maker's behalf or, if on behalf of some other person, that the maker is vested with legal right and authority to bind and obligate the other person in the making of this Certification submitted in regard to this Agreement.

The maker certifies that: No Federal appropriated funds have been paid or will be paid by or on behalf of the maker, to any person, for influencing or attempting to influence any designated person in connection with the awarding of any Federal grant or the extension, continuation, renewal, amendment or modification of any Federal grant.

In the event that the maker subcontracts work in this Agreement, the maker will provide to and require the signing of this Certification by the subcontractor, and shall keep and maintain the original signed form as part of the contract with the subcontractor.

The maker understands that this Certification is a material representation of fact upon which reliance was placed as part of this transaction.

(Date)

By: _____

KANSAS DEPARTMENT OF TRANSPORTATION CIVIL RIGHTS ACT ATTACHMENT

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency (“LEP”).

CLARIFICATION

Where the term “contractor” appears in the following “Nondiscrimination Clauses”, the term “contractor” is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Attachment shall govern should this Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration (“FTA”) or the Federal Aviation Administration (“FAA”) as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration (“FTA”), or Federal Aviation Administration (“FAA”) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

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. 07-19), 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 thirty (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 ninety (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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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.