

PROJECT NO. 106 C-4790-04  
HSIP-C479(004)  
LOCAL ROAD SAFETY PLAN  
THOMAS COUNTY, KANSAS

## AGREEMENT

This Agreement is between the Secretary of Transportation, Kansas Department of Transportation (KDOT) (the "Secretary"), and Thomas County, Kansas ("County"), collectively, the "Parties."

### RECITALS:

- A. The Secretary has authorized a federal-aid Project, as further described in this Agreement.
- B. The Secretary and the County are empowered by the laws of Kansas to enter into agreements for obtaining consultant services on roads owned by local public authorities.
- C. The Secretary and the County desire to participate in a study and to cause the preparation of a local road safety plan that will serve as guidance for County efforts to improve safety.
- D. Counties are, under certain circumstances, entitled to receive assistance in the preparation of transportation and road related plans, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with applicable Kansas and federal laws.

**NOW THEREFORE**, in consideration of these premises and the mutual covenants set forth herein, 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. "Consultant" means any engineering firm or other entity retained to perform services for the Study.
3. "Consultant Contract" means the agreement between the Secretary and the Consultant, as amended from time to time in accordance with its terms, pursuant to which the Consultant will develop the Study for the Parties.

4. **“Contract Amount”** means the amount specified in the Consultant Contract to be paid for the Study to be performed by the Consultant.
5. **“County”** means Thomas County, with its place of business at 300 N Court, Colby, Kansas, 67701.
6. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
7. **“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.
8. **“Non-Participating Costs”** means expenditures for items or services which are not integral to the development of the Study, including but not limited to costs incurred by one of the Non-KDOT Parties on its own initiative to enhance a portion of the Study for its benefit, but which does not benefit all Parties.
9. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the County.
10. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
11. **“Study”** means the studies, designs, plans, estimates, surveys, and any necessary investigations to be undertaken, developed, made or provided by the Consultant for the development of the Study of Potential Safety Improvements on all major collectors and other paved roads under the County’s jurisdiction, with the exception of subdivisions with speed limits lower than 35 mph.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Contract Administration by KDOT.** The Secretary agrees to enter into a contract, on behalf of the County, with the Consultant selected by the Secretary to perform the Study. The Secretary agrees to determine the scope of the Study and the deliverables, to monitor the process of the consultant’s work, and to verify the provision of the final deliverables, as described in the agreed-upon project scope in the Consultant Contract. The Secretary further agrees to administer the payments due the Consultant pursuant to the Consultant Contract, including any portion of cost borne by the County pursuant to this Agreement.
2. **Consultant Contract Language.** The Secretary agrees to require the Consultant to indemnify, hold harmless, and save the Parties from personal injury and property damage claims arising out of the acts or omissions of the Consultant, the Consultant’s agent, sub-consultants (at any tier), or suppliers (at any tier). If the Parties are required to defend a third party’s claim, the

Consultant shall indemnify the Parties for damages paid to the third party and all related expenses that the Parties incur in defending the claim.

3. **Plan Retention.** The Secretary agrees to furnish or have the Consultant furnish to the County one (1) paper copy and one (1) electronic copy of the final Study for the County's records.

4. **Designated Representative.** The Secretary will designate a representative to attend meetings organized by the Parties to discuss the progress of the Study and the quality of the materials being prepared.

5. **Payment of Costs.** The Secretary will be responsible for ninety percent (90%) of the Contract Amount, as set forth in the Consultant Contract for the Study.

6. **Final Billing.** After receipt of the Consultant's final voucher claim, the Secretary's Chief of Fiscal Services, will prepare a complete and final billing of all costs incurred pursuant to the Consultant Contract, for which the County is responsible, and shall then transmit the complete and final billing to the County.

### ARTICLE III

#### COUNTY RESPONSIBILITIES:

1. **Secretary Authorization.** The Secretary is authorized by the County to take such steps as are deemed necessary or advisable for the purpose of securing the benefits federal-aid for this Study. The Secretary is authorized to determine the scope of the Study and the deliverables and it shall be undertaken, prosecuted and completed for and on behalf of the County by the Secretary. All things hereinafter done by the Secretary in connection with the Study are hereby by the County authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the County acting in its own individual corporate capacity.

2. **Legal Authority.** The County agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Indemnification.** To the extent permitted by law and subject to the exceptions and the maximum liability provisions of the Kansas Tort Claims Act, the County 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 County, its employees, agents, or sub-consultants; provided, however that the County, shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

4. **Financial Obligation.** The County, in combination with nineteen (19) other counties, will be responsible for ten percent (10%) of the total actual costs of the Contract Amount for the Study. The County's maximum contribution towards the 10% of total actual costs of the Contract Amount for the Study will be \$5,280.98.

5. **Payment Withholding.** The County authorizes the Secretary to withhold or not make payment for work performed by the Consultant pursuant to the Consultant Contract that, in the opinion of the Secretary, is not in substantial compliance with the agreed upon scope, is not performed in accordance with generally recognized professional standards, or is not based on sound engineering and planning judgment.

6. **Non-Participating Costs.** If any items are found to be Non-Participating Costs by the Secretary, acting on the Secretary's own behalf, the total cost of these items will be paid for by the County.

7. **Remittance of Estimated Share.** The County will deposit with the Secretary its estimated share of the costs to be incurred pursuant to the Consultant Contract. The date indicated for County to deposit its estimated share of the total Study expenses is sixty (60) days after the date of execution by the Secretary of this Agreement.

8. **Accounting.** Upon the request of the Secretary and in order to enable the Secretary to report all costs of the Study to the legislature, the County will provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the County to any party outside of the Secretary for any other major expense associated with the Study.

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

#### ARTICLE IV

##### STUDY REQUIREMENTS:

1. **Study Objectives.** The Study will focus on developing a Local Road Safety Plan for the County, with the minimum Study objectives being to:

- Select safety emphasis areas by identifying the types of crashes that offer the greatest opportunity for crash reduction;
- Identify a short list of countermeasures most appropriate for the Study routes based on strategies that have been demonstrated to effectively reduce the identified priority crash types; and

- Identify the intersections, segments, and/or curves that are the highest priority candidates for safety investment in a prioritized manner by route and location, including information sufficient to apply for safety funding.

## ARTICLE V

### GENERAL PROVISIONS:

1. **Responsibility for Adequacy of Study.** The Consultant shall have the sole responsibility for the adequacy and accuracy of the Study. Any review of these items performed by the County or the Secretary or their representatives is not intended to and shall not be construed to be an undertaking of the Consultant's duty to provide an adequate and accurate Study. Reviews by the Secretary are not done for the benefit of the Consultant, the construction contractor, the County, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Study, or any other work performed by the Consultant or the County.

2. **Compliance with Federal and State Laws.** The Study will comply with all appropriate state and federal laws and regulations.

3. **Prior Costs Incurred.** Each Party will be individually responsible for one hundred percent (100%) of any costs related to the Study incurred by that Party prior to the execution of the Consultant Contract or the supplement to the Consultant Contract entailing the Study, as applicable.

4. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

5. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

6. **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to fulfill the payment obligations of the Secretary, the Secretary may terminate this Agreement at the end of the then current fiscal year; provided that, the Secretary will participate in all approved Consultant Contract costs incurred prior to the termination of the Agreement.

7. **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.

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

9. **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.

10. **Party Relationship.** It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed, in any manner or under any circumstances whatsoever, as creating or establishing the relation of co-partners or creating or establishing the relationship of joint venture between the Parties.

11. **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.

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

ATTEST:

Shelly A. Harms  
COUNTY CLERK



THOMAS COUNTY, KANSAS

Mike Bugh  
CHAIRPERSON

Brad Fyfe  
MEMBER

Francis Britton  
MEMBER

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_  
Burt Morey, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer



**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.

## KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment  
To Contracts or Agreements Entered Into  
By the Secretary of Transportation of the State of Kansas

### 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 Special Attachment shall govern should this Special 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. 100-209), (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)