

**AGREEMENT**

This agreement made and entered into by and between the Board of County Commissioners of Thomas hereinafter referred to as the COUNTY, and PENCO ENGINEERING, P.A., of Plainville, Kansas hereinafter referred to as the CONSULTANT.

WITNESSETH: That the COUNTY desires to engage said CONSULTANT for the design phase and construction engineering phase for the following: KDOT Project #KA-2589-01. Reconstruct and resurface County Road 31 from US-83 South 1400 feet. This contract to expire on the completion of the project.

For the engineering services described above the CONSULTANT shall receive a fee of \$85,092.60 which amount shall be complete and sufficient compensation to the CONSULTANT for services rendered in connection with the work herein set forth thusly (\*)

Reconnaissance Survey ( )	Balanced Grading Plans ( )	Surfacing Plans (*)
Normal Field Survey (*)	Linear Grading Plans ( )	Contour Maps ( )
Topographical Survey ( )	Bridge Layouts ( )	Culvert Details ( )
Geological Survey ( )	R/W Descriptions ( )	Detailed Bridge Plans ( )
Bridge Soundings ( )	Construction Cost Est. (*)	Bridge Inspection ( )
Others (*)	<u>Traffic Control</u>	

The payment of the fee for worked rendered shall be made by the COUNTY to the CONSULTANT as follows: 1) Design phase - \$34,035.60 to be billed 100% upon completion of the Final Plans. 2) Construction phase - \$51,057.00 to be billed in monthly increments as work progresses.

NOW THEREFORE, in consideration of the premises and covenants herein contained, the COUNTY and the CONSULTANT agree as follows.

THE CONSULTANT AGREES:

- 1) To make the necessary surveys and prepare the required plans for the improvement hereinbefore mentioned, for the fee as stipulated, which fee shall be complete and sufficient payment for all work performed, equipment or materials used, and services rendered in connection with such work. This project shall be designed in conformity with the state and federal design criteria appropriate for the project in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Bureau of Design's road memorandums, the County's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.
- 2) To furnish one set completed Final Plans to the COUNTY at the completion of the project. The Consultant will complete plan development stages no later than the current Project schedule due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- 3) The Consultant will submit the County progress reports as requested by the County or the Secretary of Transportation.
- 4) To save the COUNTY harmless against injury, loss, or damage arising out of the negligent acts, errors, or omissions of the consultant.

5) To comply with all state and local laws, ordinances, and regulations in effect at the time services are rendered by consultant applicable to the work. During the performance of this contract, the CONSULTANT agrees to comply with the following laws, ordinances and codes of the Federal and State government.

a) **Title VI of the Civil Rights Act of 1964, as amended**, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

b) **Section 109 of the Housing and Community Development Act of 1974**, as amended; and the regulations issued pursuant thereto (24 CFR Section 570.601). No person in the United States shall, on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal funds.

c) **Section 504 of the Rehabilitation Act of 1973** (Pub. L. 83-112), as amended and implementing regulations when published for effect. No otherwise qualified individual shall, solely by reasons of his or her disability, be excluded from participation in (including employment), denied program benefits of, or be subjected to discrimination under any program or activity receiving Federal funds.

d) **Age Discrimination Act of 1975**, as amended, (Pub. L. 94-135), and implementing regulations when published or effect. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

e) **Fair Housing Amendments Act of 1988**, which prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, disability or familial status (including children under the age of 18 living with parents or legal custodians, pregnant women and people securing custody of children under 18).

f) **Executive Order 11063** as amended by Executive Order 12259 and implementing regulations as 24 CFR Part 107. No person shall, on the basis of race, color, religion, or national origin, be discriminated against in housing (and related facilities) provided with Federal assistance or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal Government.

g) **Kansas Act Against Discrimination**. It is declared to be the policy of the State of Kansas to eliminate and prevent the practice or policy of discrimination

against individuals in employment relations, in relation to free and public accommodations or in housing by reason of race, religion, color, sex, physical disability, national origin or ancestry.

h) **Section 3 of the Housing and Urban Development Act of 1968**, as amended 12 U.S.C. 1701u. Provides that to the greatest extent feasible, opportunities for training and employment shall be given to lower-income persons residing within the project area and the non-metropolitan county in which the project is located and that contract in connection with project, be awarded to eligible business concerns located or owned in substantial part, by residents of the project area.

i) **Executive Order 11246**, as amended by Executive Orders 11375 and 12086 and implementing regulations issued at 41 CFR Chapter 60. A contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

j) **Section 912 of the Cranston-Gonzales National Affordable Housing Act of 1990**, amended Section 109 (a) of the HCD Act to prohibit discrimination on the basis of religion.

k) **Section 503 of Rehabilitation Act of 1973**, as amended, provides for the nondiscrimination in contractor employment.

THE COUNTY AGREES:

- 1) That the CONSULTANT has been duly authorized to make the surveys and prepare the plans including the performance of all necessary services and the furnishing of all labor, equipment, materials, and engineering essential thereto, for the fee as stipulated, and that said COUNTY hereby agrees to make payment to the CONSULTANT as hereinbefore set forth.
- 2) It is further understood and agreed by said COUNTY that this agreement as all contracts entered into under the provisions of this agreement shall be binding upon the Board of County Commissioners of said Thomas County, Kansas.

THE PARTIES HERETO MUTUALLY AGREE:

- 1) That the services to be performed by the CONSULTANT under the terms of this agreement are personal and cannot be sublet or transferred without written consent of the COUNTY.
- 2) The design engineers will not have control over the charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work.
- 3) That the right is reserved to the COUNTY to terminate this agreement at any time, upon written notice, in the event the improvement is to be abandoned or indefinitely postponed: provided, however, that in any such case the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this agreement.
- 4) That an adjustment of the CONSULTANT'S fee as stipulated in said agreement, may be made if, for some reason, the scope of the work as set forth in said agreement is materially changed.
- 5) When an adjustment is to be made in accordance with said agreement, the reasonable value for such adjustment shall be negotiated between the COUNTY and the CONSULTANT prior to any expenditure of time and material as may be required by said adjustment.
- 6) Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the County and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the County or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or

omissions. Nothing in this provision precludes the County from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

BE IT THEREFORE AGREED that the COUNTY hereby engages said CONSULTANT to make surveys and prepare plans all as set forth hereinbefore, and said CONSULTANT agrees to perform the same.

IT WITNESS WHEREOF, said parties have caused this agreement to be signed by their authorized officers this 31<sup>st</sup> day of October, 2011.

THOMAS COUNTY, KANSAS

CONSULTANT

PENCO ENGINEERING, P.A.  
Plainville, Kansas 67663

By: Dale K. Owings  
Dale K. Owings, P.E.  
President

COUNTY:

By: Ken Christensen  
Chairman-Board of County Commissioners

Paul M. [Signature]  
Member-Board of County Commissioners

Byron Loren  
Member-Board of County Commissioners

ATTEST:

Shelly A. Harms  
County Clerk

