

SUPPLEMENTAL AGREEMENT
ADVANCED TRANSPORTATION MANAGEMENT SYSTEM

This Agreement is made and entered into, by and between, the Kansas Department of Transportation, hereinafter referred to as "KDOT," the City of Wichita, Kansas, hereinafter referred to as "City," Sedgwick County, Kansas, hereinafter referred to as "County," and the Wichita Area Metropolitan Planning Organization, hereinafter referred to as "WAMPO" (collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, the Wichita Metropolitan Area Early Deployment Study was completed in 1998 through the joint efforts of the City, County, KDOT, and the United States Department of Transportation, and

WHEREAS, the KDOT's Intelligent Transportation System (ITS) Set-Aside Program has approved \$3,750,000 for ITS projects in the WAMPO Area (Wichita-Sedgwick County Area – Wichita ITS Program), as requested by the City and County, and

WHEREAS, the KDOT, City, and County entered into a Memorandum of Understanding dated February 12, 2002, wherein, they agreed to share the costs and responsibilities for the design and implementation of an Intelligent Transportation System (ITS) Wichita-Sedgwick County Area, and

WHEREAS, the KDOT, City, and County entered into a Supplemental Agreement dated September 15, 2004, wherein, as provided by Paragraph 3.B.1, additional funding was set aside for the design of an Advanced Transportation Management System (ATMS), and

WHEREAS, this Supplemental Agreement for ATMS State Project No. 87 K-9123-07, hereinafter referred to as the "ATMS Project," for this Supplemental Agreement, states the terms and conditions under which the Parties will be responsible for payment of their respective portions of this ATMS Project.

NOW THEREFORE, in consideration of the premises and covenants herein contained, the Parties hereto mutually agree as follows:

1. The ATMS Project, includes, but not limited to, design of a communication network, ITS field devices, and software.
2. The first phase cost of the ATMS Project is \$800,000 for design.
3. The \$800,000 shall be the responsibility of the KDOT, County, and City. The KDOT, County, and City agree that their respective share of the \$800,000 shall be as follows:

- a. \$480,000 from KDOT ITS Set-Aside Program;
 - b. \$220,000 from City of Wichita;
 - c. \$100,000 from Sedgwick County.
4. The City, County, and WAMPO agree that the KDOT shall be responsible for issuance of all invoices to WAMPO for reimbursement purposes through the City billing system. The KDOT shall submit invoices for the ATMS Project to the WAMPO. The WAMPO shall then forward all invoices, from KDOT, to the City and County for reimbursement purposes. The City is the administrative agency for the WAMPO. Once the WAMPO has received the payment from the County, it shall forthwith forward the City and County's portion of said payment to KDOT. The KDOT agrees to send no less than a monthly invoice to WAMPO through the City's Finance Department. Upon receipt of a Project invoice from the KDOT, WAMPO agrees to issue payment to the KDOT, no later than thirty (30) days after receipt of each invoice. The City and County agrees to reimburse the Secretary for any non-participating items as determined by the Secretary.
 5. This process for payment shall continue until the entire scope of work for the ATMS Project, or any addendum to the scope of work, is completed. In the event that a state "setoff" of funds due the City and County occurs during the life of the Project, all further financial obligations of the City or County hereunder shall be suspended until such funds are released. Also, KDOT's financial obligations will be suspended until such funds are released to the City and County.
 6. It is the intent of the Parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, *et seq.*) (Cash Basis Law) or the Kansas Budget Law (K.S.A. 79-2925) (Budget Law). Therefore, notwithstanding anything to the contrary herein contained, the City and County's obligations under this Agreement are to be construed in a manner that assures that the City and County are at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, the City and County's obligations hereunder will be subject to sufficiency of annual state and federal appropriations. Also, the Secretary's obligations hereunder will be subject to sufficiency of annual state and federal appropriations. The Secretary shall not be responsible for any of the City and County's obligations under this Supplemental Agreement.
 7. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Parties hereto and their successors and assigns.
 8. The KDOT agrees that the Project will be developed under applicable KDOT, WAMPO, federal, and state air quality implementation plans.

9. The KDOT agrees to comply with any applicable goals or purposes of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), enacted as Public Law 109-59 on August 10, 2005, specifically Title V, subtitle C (sections 5301-5310).
10. Comply with all federal acts identified on KDOT's Special Attachment to Agreements (Rev 07-29-1999), as defined in Exhibit A, which is attached hereto and made part of this Supplemental Agreement.
11. The KDOT, City, County, and WAMPO mutually agree that no third party beneficiaries are intended to be created by this Supplemental Agreement, nor do the Parties herein authorize anyone not a Party to this Supplemental Agreement to maintain a suit for damages pursuant to the terms or provisions of this Supplemental Agreement.

IN WITNESS WHEREOF, the KDOT, City, and County have caused this Supplemental Agreement to be executed by their respective authorized representatives.

APPROVED THIS _____ DAY OF _____ 2006, BY:

KANSAS DEPARTMENT OF TRANSPORTATION:

DEBRA L. MILLER
Secretary of Transportation



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ADOPTED THIS _____ DAY OF _____ 2006, BY THE GOVERNING
BODY OF THE CITY OF WICHITA, KANSAS.

CITY OF WICHITA:

CARLOS MAYANS, Mayor
City of Wichita

APPROVED AS TO FORM:

ATTEST:

GARY E. REBENSTORF
Director of Law

KAREN SUBLETT
City Clerk

Date

Date

This space is intentionally left blank.

ADOPTED THIS _____ DAY OF _____ 2006, BY THE BOARD OF
COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS.

SEDGWICK COUNTY:

BEN SCIORTINO, Chairman
Board of County Commissioners

APPROVED AS TO FORM:

ATTEST:

AARON T. BLASE
Assistant County Counselor

DON BRACE
County Clerk

Date

Date

APPROVED THIS _____ DAY OF _____ 2006, BY:

WICHITA AREA METROPOLITAN PLANNING ORGANIZATION

RONALD MARNELL
WAMPO Chairperson

Exhibit A

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.

(Revised 07-29-1999)