

**BOARD OF COUNTY COMMISSIONERS AGENDA  
MIAMI COUNTY, KANSAS**

Wednesday, February 10, 2021 | 1:00 p.m.

**CALL TO ORDER AND OPEN CEREMONIES**

- PLEDGE OF ALLEGIANCE
- ROLL CALL

**PUBLIC COMMENT**

The Board of County Commissioners encourages citizen participation in local governance processes. Making every effort to be in compliance with the Kansas Open Meetings Act (KSA 75-4317), you are invited to participate in today's meeting. Speakers are requested to state their full name, address, and group affiliation, if any, before delivering any remarks. Speakers should limit their comments as to not exceed five minutes. Always speak from the podium, using the microphone. If documentation or material is presented to the Board of County Commissioners, please provide them to the Clerk for distribution and filing with the official record of the meeting.

**CONSENT AGENDA**

The CONSENT AGENDA is a single agenda item that can include multiple items previously reviewed and determined to be of a routine business nature. Items that are included as part of the CONSENT AGENDA will be voted upon under a single motion unless a separate discussion on any single item is requested by a Member of the Board of County Commissioners or a member of the public. If a separate discussion on any item is requested, it will be set aside for further consideration as part of the ACTION AGENDA.

1. Approval of minutes of the county commission meeting on February 3, 2021.
2. Approval of payment vouchers.

**ACTION AGENDA**

1. BID SOLICITATION – Consider the approval of a request to solicit bids for 1-Ton Truck, 4x4, for Sign Crew (BID#2021-001) and a 1-Ton Truck, 4x2, for Asphalt Crew (BID#2021-002).
2. CONTRACT/NOTICE TO PROCEED- Consider authorizing Commission Chair to execute contract with WCI, Inc. for construction of Miami County Project No. 19-01-SB (668) in the amount of \$137,040.85. Consider Commission Chair to execute the Notice to Proceed with WCI, Inc. for a start date of February 22, 2021.
3. PROJECT AUTHORIZATION/SOLICITATION – Consider authorizing the project and staff to solicit for design services for the seven (7) culvert replacements and for the one bridge guardrail to be upgraded to crash worthy guardrail.
4. AGREEMENT – Consider authorizing Commission Chair to sign reconstruction agreement with KDOT for Metcalf 2.0 Miami County Project #18-05-CO-ST (665)/KDOT Project #61 N-0709-01.
5. AGREEMENT – Consider authorizing Commission Chair to sign ER-Slope Repair Agreement with KDOT for FAS 250 Rehabilitation Miami County Project #20-03-SB (672) / KDOT Project #61 NC-5047-01.
6. PURCHASE – Consider authorizing the purchase and installation of six (6) bumpers from Thunderstruck Bumpers for Emergency Medical Services.

**BOARD OF COUNTY COMMISSIONERS AGENDA  
MIAMI COUNTY, KANSAS**

Wednesday, February 10, 2021 | 1:00 p.m.

7. RESOLUTION– Consider authorizing the Fair Board to obtain temporary permits from ABC for the sale of alcoholic beverages no more than four (4) times per year, in accordance with KSA 41-12001 and the Alcohol Beverage Control Rules and Regulations.

**APPLICATIONS**

**REPORTS FROM STAFF, COMMITTEES, OFFICERS**

**COMMISSION COMMENTS**

**EXECUTIVE SESSION**

**ADJOURNMENT**

Miami County does not discriminate on the basis of race, color, national origin, gender, religion, age disability, genetic information, or other circumstance prohibited by federal, state, or local law, rule, or regulation, including Title II of the Americans with Disabilities Act. A request for accommodation for a disability; or other assistance, should be made, if possible, at least 3 days in advance to County Counselor, Sheila Schultz @ 913-294-3914.

# MIAMI COUNTY

## STAFF REQUEST FOR COMMISSION ACTION

|   |  |
|---|--|
| <b>SUBMITTED BY:</b><br>J.R. McMahon and Mark Hays        | <b>REQUESTED MEETING DATE:</b><br>February 10th 2021   |
| <b>DEPARTMENT:</b><br>Road and Bridge                     | <b>REQUESTED MEETING:</b><br><input checked="" type="checkbox"/> <b>STUDY SESSION</b> <input checked="" type="checkbox"/> <b>REGULAR MEETING</b> |
| <b>CONTACT INFORMATION:</b><br>J.R. McMahon and Mark Hays | <b>PROJECT / REFERENCE NUMBER:</b><br>Bid # 2021-001(Sign Truck) & 2021-002 (Asphalt Truck)  |

**AGENDA SUBJECT:**  
The 2020 Road and Bridge Budget allows for the purchase of two- 1 tons trucks. One for the Sign Crew and one for the Asphalt/Snow Crew. The advent of COVID-19 concerns caused these items to be postponed until 2021 with the funding put in the the Special Machinery Fund.

**AGENDA SUBJECT BACKGROUND / DESCRIPTION:**  
See Attached Memos

**REQUESTED ACTION / STAFF RECOMMENDATION:**  
Commission consideration to approve the submittal of bid # 2021-001 & 2021-002 for solicitation.

**BUDGET IMPACT:**  
\$75,000 Est.

|  |   |
|--|---|
| <b>BUDGET AVAILABLE FOR THIS ITEM:</b><br>\$214,329.99 | <b>BUDGET REMAINING FOR THIS ITEM:</b><br>\$139,329.99  |
| <b>FUND / LINE ITEM TO BE CHARGED:</b><br>331-331-3709 | <b>ITEM BUDGETED?:</b><br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |
|  | <b>CAPITAL PROJECT?:</b><br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |

**J.R. McMahon**

Digitally signed by J.R. McMahon  
Date: 2021.02.01 14:20:18 -06'00'

2-01-2021

SUBMITTER'S SIGNATURE:

DATE:

FISCAL REVIEW

*Steve Lyman*

SIGNATURE:

2/5/2021

DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

*Shane Kull*

SIGNATURE:

2-5-21

DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes

No

NPG Account Number:

Mail Distribution Required:

Mailed By:

Yes

No

# Memo



J. R. McMAHON  
DIRECTOR

**To:** Shane Krull  
**From:** J. R. McMahon *JR* Mark Hays  
**Date:** February 1, 2021  
**Subject:** Bid 2021-01  
Asphalt/Snow Truck

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The 2020 replacement schedule has us replacing the sign truck #147. Due to COVID-19 concerns the purchase of the truck was postponed to 2021 with the funding credited to the Special Machinery Fund.

The Department will be bidding a cab and chassis only with 4-wheel drive. Once the truck arrives we will have a custom bed made and installed per our requirements by Genco of Garnett.

This truck will have multiple uses, in the summer the asphalt crew will haul sign's and equipment. Winter use will include a snow plow and sander on sub-divisions. Therefore the truck will be a 4\*4.

The truck it will be replacing is still operational but the years of salting has caused extreme corrosion on the undercarriage and frame. The current truck we are replacing is truck #147 with 77,507 miles.

Disposal of the old truck will be through Purple Wave.

Please schedule for this item for a work session.

If there are any questions please contact me.

## DETAILED SPECIFICATIONS

### MIAMI COUNTY, KANSAS

|                  |                                  |
|------------------|----------------------------------|
| <b>IFB No.</b>   | <b>2021-001</b>                  |
| <b>BID TITLE</b> | <b>1-TON CAB AND CHASSIS 4X4</b> |
| <b>BID TYPE</b>  | <b>1-TON CAB AND CHASSIS 4X4</b> |

DEALER  
NAME: \_\_\_\_\_

QUOTE COMPLETED BY & DATE : \_\_\_\_\_

CONTACT EMAIL: \_\_\_\_\_

### BASE VEHICLE SPECIFICATIONS - 4 X 4, 1-TON CAB AND CHASSIS

| BIDDER COMPLETION OF APPLICABLE SPACES IS ENCOURAGED |   |                          |             |                 |       |
|--|---|--------------------------|-------------|-----------------|-------|
| FEATURE  | DESCRIPTION   | MFG'S CODE & DESCRIPTION | MEETS SPECS | BIDDERS REMARKS |       |
| Model Equal To                                       | Heavy Duty Truck, Cab and Chassis only / New or Current Year Production<br>State Make, Model, Year                            | _____                    | YES/NO      | _____           | _____ |
|  | Full-Size Truck, 4 X 4<br>Frame Width 34.5"<br>State Frame Width  | _____                    | YES/NO      | _____           | _____ |
|  | Specify Cab to Axle Distance 70 inches minimum  | _____                    | YES/NO      | _____           | _____ |
| Engine   | Minimum V8, 5.0L minimum<br>385 SAE Net H.P., - gasoline<br>430 ft.lbs. Torque minimum<br>State Liter & Horsepower in remarks | _____                    | YES/NO      | _____           | _____ |
|  | Heavy Duty Radiator   | _____                    | YES/NO      | _____           | _____ |
| Transmission   | Standard Automatic per model bid<br>6-Speed with overdrive and cooler - minimum   | _____                    | YES/NO      | _____           | _____ |
| GVWR   | 12,500 GVWR or greater  | _____                    | N/A         | _____           | _____ |
| Paint  | Standard Paint, White   | _____                    | YES/NO      | _____           | _____ |
| Warranty   | State Terms-Provide Website   | _____                    | N/A         | _____           | _____ |
| MPG  |   | _____                    | N/A         | _____           | _____ |

### MINIMUM SPECIFICATIONS FOR ALL UTILITY VEHICLES ARE AS FOLLOWS:

| FEATURE          | DESCRIPTION                                     | MFG'S CODE & DESCRIPTION | MEETS SPECS | BIDDERS REMARKS |       |
|------------------|---|--------------------------|-------------|-----------------|-------|
| Wheelbase        | Specify Wheelbase 70 inches minimum Cab to Axle | _____                    | YES/NO      | _____           | _____ |
| Steering         | Factory Power Steering                          | _____                    | YES/NO      | _____           | _____ |
|                  | Tilt Steering Column                            | _____                    | YES/NO      | _____           | _____ |
| Brakes           | Factory Cruise Control                          | _____                    | YES/NO      | _____           | _____ |
|                  | Factory Power Anti-Lock Brakes                  | _____                    | YES/NO      | _____           | _____ |
| Tires and Wheels | Tubeless Steel-Belted Radial, BSW<br>All Season | _____                    | YES/NO      | _____           | _____ |

|                           |  |                             |        |        |  |
|---------------------------|--|-----------------------------|--------|--------|--|
|                           | 16" or 17" Wheels and Tires                                |                             | YES/NO |        |  |
|                           | Standard Spare tire and rim for model, same size as others |                             |        |        |  |
| Exterior                  | Dual Rear Wheels   |                             | YES/NO |        |  |
|                           | Heated Power Side View Mirrors                             |                             | YES/NO |        |  |
|                           | Tinted Windows-All   |                             | YES/NO |        |  |
|                           | Back-up Alarm  |                             | YES/NO |        |  |
|                           | Tow Package with Tow Hook and rear trailer plug-in         |                             | YES/NO |        |  |
|                           | Snow-Plow Package  |                             | YES/NO |        |  |
|                           | Front Bumper   |                             | YES/NO |        |  |
|                           | Factory Intermittent Wipers                                |                             | YES/NO |        |  |
|                           | Rear Defroster   |                             | YES/NO |        |  |
|                           | (3) Key-Fob's with Door Controls                           |                             | YES/NO |        |  |
| Interior                  | Both key and keyless entry systems                         |                             | YES/NO |        |  |
|                           | Outside Cab Steps  |                             | YES/NO |        |  |
|                           | Manufacturer Manual  |                             | YES/NO |        |  |
|                           | Instrumentation Gauges - Standard per model                |                             | YES/NO |        |  |
|                           | Auxiliary Brake Controller                                 |                             | YES/NO |        |  |
|                           | Front/Rear Stabilizer Bar                                  |                             | YES/NO |        |  |
|                           | Factory Air Conditioning                                   |                             | YES/NO |        |  |
|                           | Heater/Defroster   |                             | YES/NO |        |  |
|                           | Auxiliary Power Outlets                                    |                             | YES/NO |        |  |
|                           | Factory Power Door Locks                                   |                             | YES/NO |        |  |
|                           | Factory Power Windows                                      |                             | YES/NO |        |  |
|                           | Factory AM/FM Radio  |                             | YES/NO |        |  |
|                           | Dual Sun Visors  |                             | YES/NO |        |  |
|                           | Mirrors - Wide Field Vision Extended For Wide Bed          |                             | YES/NO |        |  |
|                           | Inside Day/Night Mirror                                    |                             | YES/NO |        |  |
|                           | Floor Covering-Vinyl Neutral Color with Mats               |                             | YES/NO |        |  |
|                           | Air Bags   | Outside Temperature Display |        | YES/NO |  |
| Driver/Passenger Air Bags |  |                             |        |        |  |
| Side Air Bag              |  |                             | YES/NO |        |  |
| Seats                     | Roof Rail Air Bag  |                             | YES/NO |        |  |
|                           | Cloth Bench Seat, Split 40/20/40.                          |                             | YES/NO |        |  |

**END OF SPECIFICATIONS**

**BIDSHEET FOR BID#2021-001  
THIS IS NOT AN ORDER**

**1-TON CAB AND CHASSIS 4X4  
Include Brochure with Bid Packet**

| DESCRIPTION              | OPTIONAL EQUIPMENT DESCRIPTION | OPTIONAL EQUIPMENT /PRICE | QTY/UNIT (1)<br>4 X 4 MODEL<br>UNIT PRICE | TOTAL PRICE |
|--------------------------|--------------------------------|---------------------------|---|-------------|
| YEAR:<br>MAKE:<br>MODEL: |                                |                           |   |             |

Delivery Terms: \_\_\_\_\_ Quote is good for \_\_\_\_\_ days.

Exceptions/Additions to specifications Yes \_\_\_ No \_\_\_

If Yes, attach a separate sheet detailing the same. Note: It shall be unacceptable for any bidder to make the statement "see specifications" in lieu of listing all exceptions/additions from the preceding specifications. It shall also be unacceptable for any bidder to submit the manufacturer's literature in lieu of the above. All exceptions/additions to our specifications shall be either handwritten or typed on an attached separate sheet.

We hereby agree to furnish the items on which prices are quoted above and on subsequent pages in accordance with all terms and conditions previously listed and any attached specifications.

\_\_\_\_\_  
Company Name Date

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Signature of Bidder Title

\_\_\_\_\_  
Typed or Printed Name of Bidder Telephone No.

\_\_\_\_\_  
Email address

**UPON AWARD – DEALER WILL BE NOTIFIED BY THE AWARDED DEPARTMENT.  
THE FOLLOWING TERMS WILL BE APPLICABLE TO THE ORDER.**

- Delivery complete and ready to use to Miami County Road and Bridge 23765 W 327<sup>th</sup> St, Paola, Kansas, 66071
- Payment is made within 30 days of the invoice.
- Titles to be made out to Miami County Kansas





SALT DOGGY BUYERS

ROAD & BUJICE

Salt Doggy Buyers

HANKOOK  
DYNAPRO AT M

# Memo



J. R. McMAHON  
DIRECTOR

**To:** Shane Krull  
**From:** J. R. McMahon / Mark Hays  
**Date:** February 1, 2021  
**Subject:** Bid 2021-02  
Sign Truck

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The 2020 replacement schedule has us replacing the sign truck #148. Due to COVID-19 concerns the purchase of the truck was postponed to 2021 with the funding credited to the Special Machinery Fund.

The Department will be bidding a cab and chassis only with 2-wheel drive. Once the truck arrives we will have a custom sign bed made and installed per our requirements by Genco of Garnett.

The current truck we are replacing is a 2008 F350 with 183,912 miles with extreme amount of idle time from data entry in the field. The current truck will remain in use until the new truck and bed are complete.

Disposal of the old truck will be through Purple Wave.

Please schedule for this item for a work session.

If there are any questions please contact me.

**SPECIFICATIONS**  
**MIAMI COUNTY, KANSAS**

|                  |                           |
|------------------|---------------------------|
| <b>IFB No.</b>   | 2021-002                  |
| <b>BID TITLE</b> | 1-TON CAB AND CHASSIS 4X2 |
| <b>BID TYPE</b>  | 1-TON CAB AND CHASSIS 4X2 |

**DEALER NAME:** \_\_\_\_\_

**QUOTE COMPLETED BY & DATE :** \_\_\_\_\_

**CONTACT EMAIL:** \_\_\_\_\_

**BASE VEHICLE SPECIFICATIONS – 4 X 2, 1-TON CAB AND CHASSIS**

| BIDDER MUST COMPLETE ANY APPLICABLE SPACES |   |                          |             |                 |       |
|--|---|--------------------------|-------------|-----------------|-------|
| FEATURE                                    | DESCRIPTION   | MFG'S CODE & DESCRIPTION | MEETS SPECS | BIDDERS REMARKS |       |
| Model Equal To                             | Heavy Duty Truck, Cab and Chassis only / New or Current Year Production<br>State Make, Model, Year                          | _____                    | YES/NO      | _____           | _____ |
|  | Extended Cab/Double Cab Truck, 4 X 2  | _____                    | YES/NO      | _____           | _____ |
|  | Frame Width 34.5"<br>State Frame Width  | _____                    | YES/NO      | _____           | _____ |
|  | Specify Cab to Axle Distance  | _____                    | YES/NO      | _____           | _____ |
| Engine                                     | Minimum V8, 5.0L, minimum 385 SAE Net H.P., – gasoline<br>430 ft.lbs. Torque minimum<br>State Liter & Horsepower in remarks | _____                    | YES/NO      | _____           | _____ |
|  | Heavy Duty Radiator   | _____                    | YES/NO      | _____           | _____ |
| Transmission                               | Standard Automatic per model bid<br>6-Speed with overdrive and cooler – minimum   | _____                    | YES/NO      | _____           | _____ |
| GVWR                                       | 12,500 GVWR or greater  | _____                    | N/A         | _____           | _____ |
| Paint                                      | Standard Paint, White   | _____                    | YES/NO      | _____           | _____ |
| Warranty                                   | State Terms-Provide Website   | _____                    | N/A         | _____           | _____ |
| MPG  | State Miles Per Gallon and tank size  | _____                    | N/A         | _____           | _____ |

**MINIMUM SPECIFICATIONS FOR ALL UTILITY VEHICLES ARE AS FOLLOWS:**

| FEATURE          | DESCRIPTION   | MFG'S CODE & DESCRIPTION | MEETS SPECS | BIDDERS REMARKS |       |
|------------------|---|--------------------------|-------------|-----------------|-------|
| Wheelbase        | Specify Wheelbase 84 Inch Min from From Cab to Axle                         | _____                    | YES/NO      | _____           | _____ |
| Steering         | Factory Power Steering  | _____                    | YES/NO      | _____           | _____ |
|                  | Tilt Steering Column  | _____                    | YES/NO      | _____           | _____ |
|                  | Factory Cruise Control  | _____                    | YES/NO      | _____           | _____ |
| Brakes           | Factory Power Anti-Lock Brakes  | _____                    | YES/NO      | _____           | _____ |
| Tires and Wheels | Tubeless Steel-Belted Radial, BSW All Season<br>16" or 17" Wheels and Tires | _____                    | YES/NO      | _____           | _____ |
|                  |   | _____                    | YES/NO      | _____           | _____ |

|          |  |       |        |       |
|----------|--|-------|--------|-------|
|          | Standard Spare tire and rim for the model, the same size as others | _____ | _____  | _____ |
| Exterior | Dual Rear Wheels   | _____ | YES/NO | _____ |
|          |  | _____ | YES/NO | _____ |
|          | Tinted Windows-All   | _____ | YES/NO | _____ |
|          | Backup Alarm   | _____ | YES/NO | _____ |
|          |  | _____ | YES/NO | _____ |
|          | Front/Rear Stabilizer Bar  | _____ | YES/NO | _____ |
|          |  | _____ | YES/NO | _____ |
|          | Tow Package with Tow Hooks and rear trailer plug-in                | _____ | YES/NO | _____ |
|          |  | _____ | YES/NO | _____ |
|          | Front Bumper   | _____ | YES/NO | _____ |
| Interior | Factory Intermittent Wipers  | _____ | YES/NO | _____ |
|          | Rear Defroster   | _____ | YES/NO | _____ |
|          | Outside, Power Rear View Mirrors                                   | _____ | YES/NO | _____ |
|          | (3) Key-Fob's with Door Controls                                   | _____ | YES/NO | _____ |
|          | Both key and key-less entry systems                                | _____ | YES/NO | _____ |
|          | Outside Cab Steps  | _____ | YES/NO | _____ |
|          | Manufacturer Manual  | _____ | YES/NO | _____ |
|          | Instrumentation Gauges - Standard per model                        | _____ | YES/NO | _____ |
|          |  | _____ | YES/NO | _____ |
|          | Factory Air Conditioning   | _____ | YES/NO | _____ |
|          | Heater/Defroster   | _____ | YES/NO | _____ |
|          | Auxiliary Power Outlets  | _____ | YES/NO | _____ |
|          | Factory Power Door Locks   | _____ | YES/NO | _____ |
|          | Brake Controller   | _____ | YES/NO | _____ |
|          | Factory AM/FM Radio  | _____ | YES/NO | _____ |
|          | Dual Sun Visors  | _____ | YES/NO | _____ |
|          | Mirrors – Wide Field Vision Extended For Wide Bed                  | _____ | YES/NO | _____ |
|          | Inside Day/Night Mirror  | _____ | YES/NO | _____ |
|          | Floor Covering-Vinyl Front & Rear-Neutral Color with Mats          | _____ | YES/NO | _____ |
|          |  | _____ | YES/NO | _____ |
| Air Bags | Outside Temperature Display  | _____ | YES/NO | _____ |
|          | Driver and Passenger Air Bags                                      | _____ | YES/NO | _____ |
|          | Side Air Bag   | _____ | YES/NO | _____ |
| Seats    | Roof Rail Air Bag  | _____ | YES/NO | _____ |
|          | Cloth Bench Seat, Split 40/20/40.                                  | _____ | YES/NO | _____ |
|          | Backseat – Bench/Cloth   | _____ | YES/NO | _____ |
|          | Color-Neural   | _____ | YES/NO | _____ |

**BIDSHEET FOR BID #2021-002  
THIS IS NOT AN ORDER**

**1 TON CAB AND CHASSIS 4 X 2  
Include Brochure with Bid Packet**

| VEHICLE DESCRIPTION<br>MODEL/YEAR   | BASE BID | N/A | QTY/UNIT (1)<br>4 X 2 MODEL<br>PRICE | TOTAL<br>PRICING |
|---|----------|-----|--------------------------------------|------------------|
| 4 X 2, PICKUP, 1-TON,<br>TRUCK/CAB and CHASIS<br>Model: _____<br>Make: _____<br>Year: _____ |          |     |                                      |                  |
| Include Brochure and detailed specifications on model bid.<br>State Warranty Period _____   |          |     |                                      | \$               |

Delivery Terms: \_\_\_\_\_ Quote is good for \_\_\_\_\_ days.

Exceptions/Additions to specifications Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, attach a separate sheet detailing the same. Note: It shall be unacceptable for any bidder to make the statement "see specifications" in lieu of listing all exceptions/additions from the preceding specifications. It shall also be unacceptable for any bidder to submit the manufacturer's literature in lieu of the above. All exceptions/additions to our specifications shall be either handwritten or typed on an attached separate sheet.

We hereby agree to furnish the items on which prices are quoted above and on subsequent pages in accordance with all terms and conditions previously listed and any attached specifications.

\_\_\_\_\_  
Company Name Date

\_\_\_\_\_  
Address City State Zip

\_\_\_\_\_  
Signature of Bidder Title

\_\_\_\_\_  
Typed or Printed Name of Bidder Telephone No.

\_\_\_\_\_  
Email address

**UPON AWARD – DEALER WILL BE NOTIFIED BY THE AWARDING DEPARTMENT.  
THE FOLLOWING TERMS WILL BE APPLICABLE TO THE ORDER.**

- Delivery complete and ready to use to Miami County Highway Department 23765 W 327<sup>th</sup> St, Paola, Kansas, 66071
- Payment is made within 30 days of the invoice.
- Titles to be made out to Miami County Kansas





F-350  
SUPER DUTY  
XL

148



# MIAMI COUNTY

## STAFF REQUEST FOR COMMISSION ACTION

|   |  |
|---|--|
| <b>SUBMITTED BY:</b><br>Matthew Oehlert                   | <b>REQUESTED MEETING DATE:</b><br>Wednesday, February 10, 2021   |
| <b>DEPARTMENT:</b><br>Road and Bridge                     | <b>REQUESTED MEETING:</b><br><input checked="" type="checkbox"/> <b>STUDY SESSION</b> <input checked="" type="checkbox"/> <b>REGULAR MEETING</b> |
| <b>CONTACT INFORMATION:</b><br>moehlert@miamicountyks.org | <b>PROJECT / REFERENCE NUMBER:</b><br>19-01-SB (668)   |

**AGENDA SUBJECT:**  
Evening Star Culvert Replacement Project No. 19-01-SB (668) Construction Contract and Notice to Proceed with WCI, Inc.

**AGENDA SUBJECT BACKGROUND / DESCRIPTION:**  
Construction contract between Miami County, KS and WCI, Inc. for construction of Miami County Project No. 19-01-SB (668) Evening Star Culvert Replacement. Project is located on Evening Star Road 0.28 mile south of 169 Hwy. Contractor bid is \$137,040.85. Start date for construction is February 22, 2021 with 90 calendar days, therefore the estimated completion date is May 23, 2021.

**REQUESTED ACTION / STAFF RECOMMENDATION:**  
Commission to authorize Commission Chair to execute contract with WCI, Inc for construction of Miami County Project No. 19-01-SB (668) in the amount of \$137,040.85.  
  
Commission to authorize Commission Chair to execute the Notice to Proceed with WCI, Inc. for a start date of February 22, 2021.

**BUDGET IMPACT:**  
\$137,040.85

|   |   |
|---|---|
| <b>BUDGET AVAILABLE FOR THIS ITEM:</b><br>\$150,000.00      | <b>BUDGET REMAINING FOR THIS ITEM:</b><br>\$12,959.15   |
| <b>FUND / LINE ITEM TO BE CHARGED:</b><br>0450-327-3714-668 | <b>ITEM BUDGETED?:</b><br><input checked="" type="checkbox"/> <b>YES</b> <input type="checkbox"/> <b>NO</b>   |
|   | <b>CAPITAL PROJECT?:</b><br><input checked="" type="checkbox"/> <b>YES</b> <input type="checkbox"/> <b>NO</b> |

**Matthew Oehlert** Digitally signed by Matthew Oehlert  
Date: 2021.02.04 09:02:06 -06'00' 2/4/2021

---

SUBMITTER'S SIGNATURE: DATE:

FISCAL REVIEW

*Steve Lyman*  
SIGNATURE:

2/5/2021  
DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

*Steve Knell*  
SIGNATURE:

2-5-21  
DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes

No

NPG Account Number:

Mail Distribution Required:

Mailed By:

Yes

No

00531  
AGREEMENT

THIS AGREEMENT, made this 10th day of February 2021, by \_\_\_\_\_  
and between Miami County Commission, hereinafter called "OWNER," and  
WCI, Inc (an individual) (a corporation) (a partnership),  
hereinafter called "CONTRACTOR." WITNESSETH: That for and in consideration of the payments and  
agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of  
Culvert Replacement Project, Evening Star Rd Miami County Project No. 19-01-SB (668) RFB# 2020-014
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor, and other  
services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS  
within 10 calendar days after the date of the NOTICE TO PROCEED and will complete the  
project within 90 calendar days unless the period for completion is extended otherwise by the  
CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT  
DOCUMENTS and comply with the terms therein for the sum of \$ 137,040.85 \_\_\_\_\_,  
or as shown in the bid schedule. One hundred thirty-seven thousand forty dollars and eighty-five cents.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
  - (A) Advertisement For BIDS
  - (B) Information For BIDDERS
  - (C) BID
  - (D) BID BOND
  - (E) Agreement
  - (F) General Conditions
  - (G) SUPPLEMENTAL GENERAL CONDITIONS
  - (H) Payment BOND
  - (I) Performance BOND
  - (J) NOTICE OF AWARD
  - (K) NOTICE TO PROCEED
  - (L) CHANGE ORDER
  - (M) DRAWINGS by Pfefferkorn Engineering & Environmental, numbered through 1-10, and  
dated December 4, 2020.
  - (N) SPECIFICATIONS by Pfefferkorn Engineering & Environmental, LLC,  
dated December 4, 2020.
  - (O) ADDENDA  
No. \_\_\_\_\_, dated \_\_\_\_\_  
No. \_\_\_\_\_, dated \_\_\_\_\_
6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in  
the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
7. This agreement shall be binding upon all parties hereto and their respective heirs, executors,  
administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement is 4 copies, each of which shall be deemed an original on the date first above written.

ATTEST: Miami County Commission

\_\_\_\_\_

Name (please type)

\_\_\_\_\_

Title

OWNER:

By \_\_\_\_\_

Name (please type)

\_\_\_\_\_

Title

ATTEST:

*T. Klaasmeyer*

Tueker Klaasmeyer

Name (please type)

\_\_\_\_\_

Title

CONTRACTOR

WCI Inc

By *Dale Klug*

Dale Klaasmeyer

Name (please type)

\_\_\_\_\_

Title

END OF SECTION 00531



# Project 19-01-SB (668)

Evening Star Road 0.28 mile south of 169 Hwy



Google Earth

© 2018 Google

# MIAMI COUNTY

## STAFF REQUEST FOR COMMISSION ACTION

|   |  |
|---|--|
| <b>SUBMITTED BY:</b><br>Matthew Oehlert                   | <b>REQUESTED MEETING DATE:</b><br>Wednesday, February 10, 2021   |
| <b>DEPARTMENT:</b><br>Road and Bridge                     | <b>REQUESTED MEETING:</b><br><input checked="" type="checkbox"/> <b>STUDY SESSION</b> <input checked="" type="checkbox"/> <b>REGULAR MEETING</b> |
| <b>CONTACT INFORMATION:</b><br>moehlert@miamicountyks.org | <b>PROJECT / REFERENCE NUMBER:</b><br>21-03-SB (678)   |

**AGENDA SUBJECT:**  
Project Authorization and Authorization to Solicit for Design Services for Culvert Replacements and Bridge Guardrail

**AGENDA SUBJECT BACKGROUND / DESCRIPTION:**  
Project Authorization and Authorization to Solicit for Design Services on the Culvert Replacements at the following locations: Culvert 2616 located on 327th street w/o Switzer, Culvert 249 located on 231st Street e/o Mission, Culvert 1926 located on Block Road s/o 351st Street, Culvert 1208 located on Plum Creek Road n/o 311th Street, Culvert 1750 located on 335th Street w/o Switzer Road, Culvert 2169 located on 367th Street e/o Jingo Road, Culvert 1836 located on 347th Street e/o Cedar Niles Road, and Bridge FAS 270 Guardrail replacement located on Hospital Drive 0.33 mile w/o Hedge Lane.

**REQUESTED ACTION / STAFF RECOMMENDATION:**  
Staff requests Commission to authorize project and authorize staff to solicit for design services for the seven culvert replacements and for the one bridge guardrail to be upgraded to crash worthy guardrail.

**BUDGET IMPACT:**  
\$170,000.00

|  |   |   |
|--|---|---|
| <b>BUDGET AVAILABLE FOR THIS ITEM:</b>                 | <b>BUDGET REMAINING FOR THIS ITEM:</b>  |   |
| <b>FUND / LINE ITEM TO BE CHARGED:</b><br>327-327-3711 | <b>ITEM BUDGETED?:</b><br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <b>CAPITAL PROJECT?:</b><br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |

**Matthew Oehlert** Digitally signed by Matthew Oehlert  
 Date: 2021.02.04 09:01:41 -06'00' 2/4/2021

---

SUBMITTER'S SIGNATURE: DATE:

FISCAL REVIEW

*Steve Symon*  
SIGNATURE:

*2/5/2021*  
DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

*Shane Knoll*  
SIGNATURE:

*2-5-21*  
DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes

No

NPG Account Number:

Mail Distribution Required:

Mailed By:

Yes

No

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**INTEROFFICE MEMORANDUM**

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**TO:** SHANE KRULL, MIAMI COUNTY ADMINISTRATOR  
**FROM:** MATTHEW OEHLERT, PROJECT MANAGER  
**SUBJECT:** CULVERT REPLACEMENT DESIGN PHASE  
**DATE:** 2/10/21  
**CC:** JR MCMAHON, ROAD AND BRIDGE DIRECTOR

---

Project Information: Project Authorization and Authorization to Solicit for Design Services on the Culvert Replacements listed below

Project Scope: Design phase for the culvert replacements at the following locations:

\*Culvert 2616 located on 327th street w/o Switzer

\*Culvert 249 located on 231st Street e/o Mission

\*Culvert 1926 located on Block Road s/o 351st Street

\*Culvert 1208 located on Plum Creek Road n/o 311th Street

\*Culvert 1750 located on 335th Street w/o Switzer Road

\*Culvert 2169 located on 367th Street e/o Jingo Road

\*Culvert 1836 located on 347th Street e/o Cedar Niles Road

\*Bridge FAS 270 Guardrail replacement located on Hospital Drive 0.33 mile w/o Hedge Lane.

Utilities: N/A

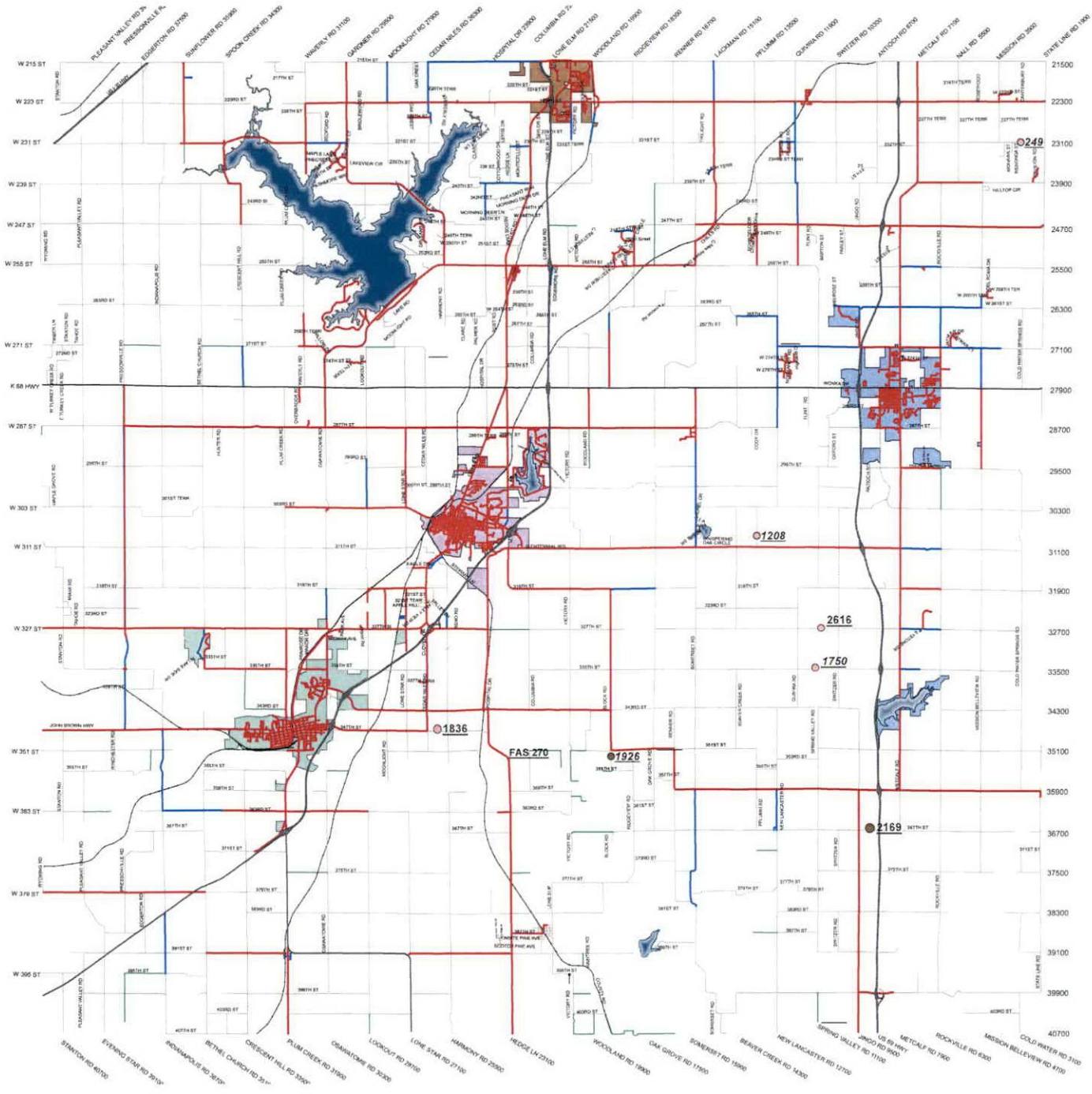


**Miami County  
Project Authorization Form**

Project Number 21-03-SB (678)  
 Project Type Design for Culvert Replacement  
 Project Location Various  
 Project Length Various



| Project Cost Estimate           | Units           | Unit Costs | Projected Costs | Totals  |
|---------------------------------|-----------------|------------|-----------------|---------|
| <b>Preliminary Engineering</b>  |                 |            |                 |         |
| % of Construction Cost          |                 |            | 170,000         | 170,000 |
|                                 |                 |            |                 | 170,000 |
| <b>Right-of-Way</b>             |                 |            |                 |         |
| Parcels                         |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Utility Adjustments</b>      |                 |            |                 |         |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Construction Layout</b>      |                 |            |                 |         |
| In-House                        |                 |            |                 | 0       |
| Contract                        |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Administration</b>           |                 |            |                 |         |
| Permits                         | KHDE, DWR, Etc. |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Construction</b>             |                 |            |                 |         |
|                                 | Contract        |            |                 | 0       |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Construction Engineering</b> |                 |            |                 |         |
| % of Construction Cost          |                 | 10%        | 0               | 0       |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Contingencies</b>            |                 |            |                 |         |
|                                 |                 | 0%         | 0               | 0       |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |
| <b>Interim Interest</b>         |                 |            |                 |         |
|                                 |                 | 0%         | 0               | 0       |
|                                 |                 |            |                 | 0       |
|                                 |                 |            |                 | 170,000 |



### Culvert Structure Type

- CMP
- Concrete Slab
- Other
- RCB
- RCP
- Steel Stringer
- Timber Stringer

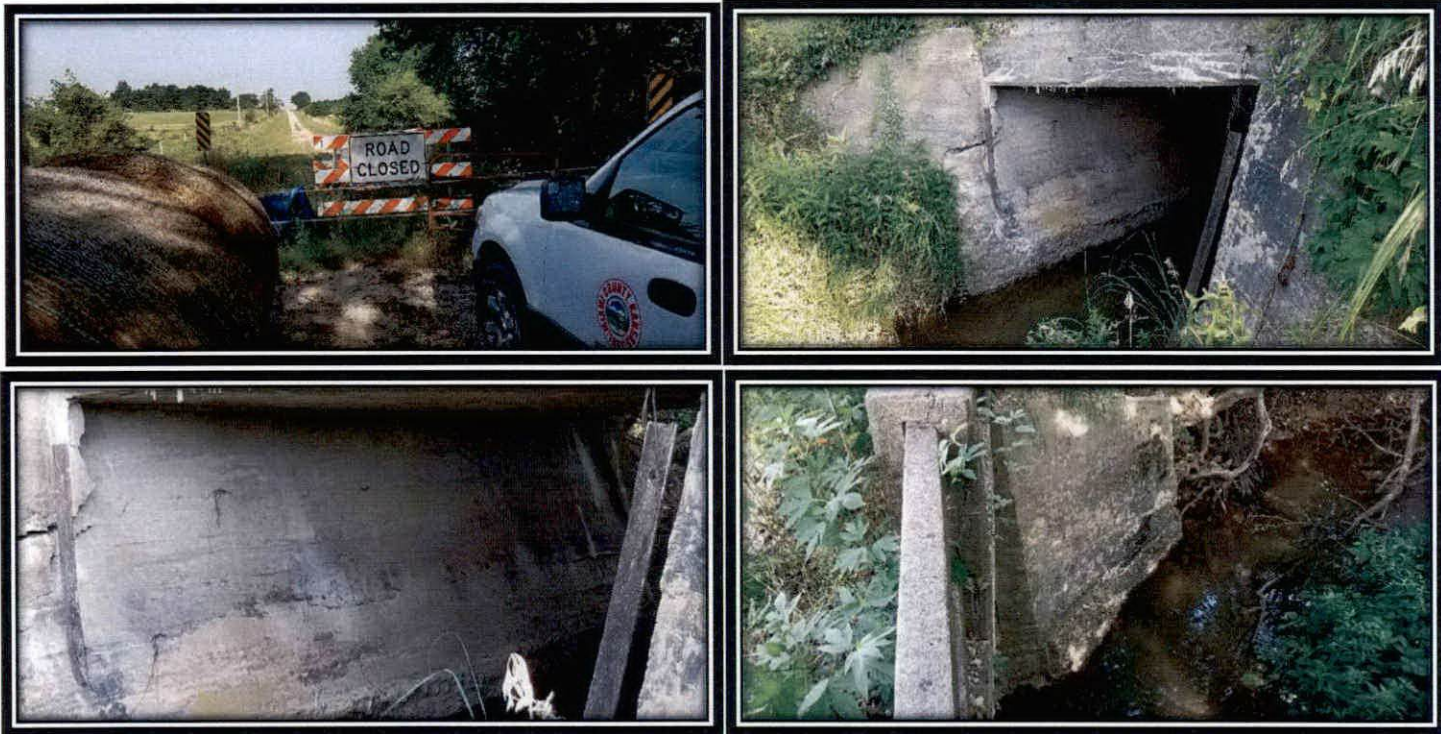
### 2019 Road Pavement Class

#### Pavement Class

- Freeway
- Paved
- Chip & Seal
- Chip & Seal Dust
- Gravel
- Minimum Maintenance
- Louisburg
- Osawatometie
- Paola
- Spring Hill



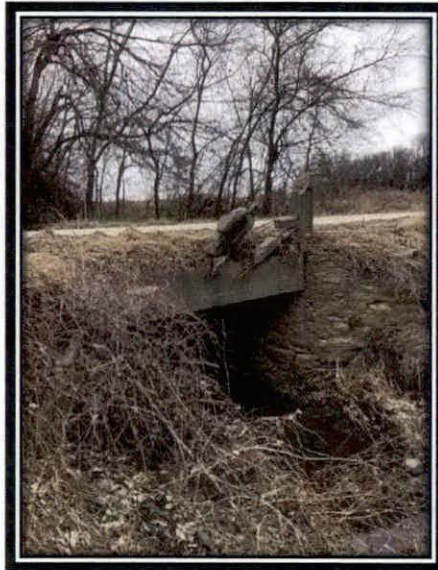
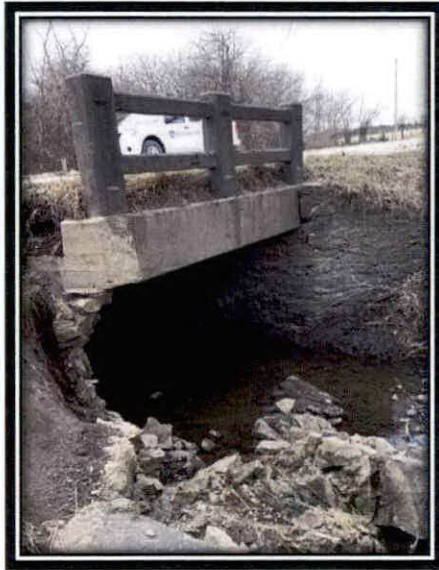
# Culvert #2616: 327<sup>th</sup> Street w/o Switzer (Reinforced Concrete Slab)



| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 12.1           | 20.5            | 5              | 3                        | 1                      | N/A                    | 3                 |

**Inspection Notes:**  
 West abutment failed. Scour caused west abutment to collapse tipping out of plain. Loss of load path 100%. Concrete sheared and broken at moment areas. Channel alignment migrating towards west abutment. Vertical banks with heavy erosion.

## Culvert #249: 231<sup>st</sup> Street e/o Mission (Concrete Slab)



| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 10             | 24              | 6              | 6                        | 3                      | N/A                    | 6                 |

### Inspection Notes:

Northeast masonry wing is collapsed into channel, east masonry abutment has extensive crushing, first layer of stone has failed on east abutment.

## Culvert #1926: Block Road s/o 351<sup>st</sup> Street (Steel Stringer)

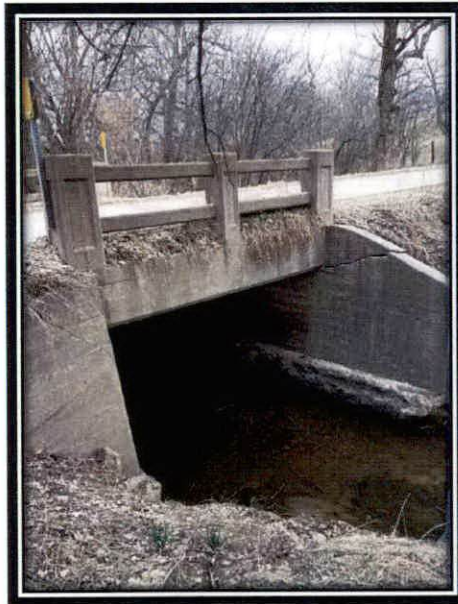


| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 10             | 20              | 6              | 6                        | 3                      | N/A                    | 6                 |

### Inspection Notes:

Severe deterioration, abutments are failing.

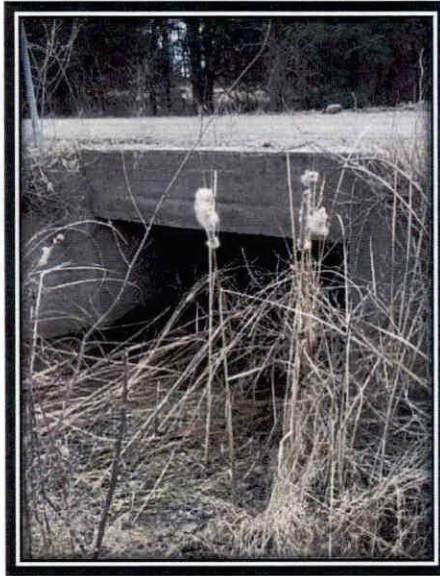
## Culvert #1208: Plum Creek Road n/o 311<sup>th</sup> Street (Concrete Slab)



| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 12             | 18              | 6              | 6                        | 3                      | N/A                    | 3                 |

**Inspection Notes:**  
 Deck is separated from the south abutment has pushed 3 inches. Major scour under both abutments and all wings.

## Culvert #1750: 335<sup>th</sup> Street w/o Switzer (Concrete Slab)

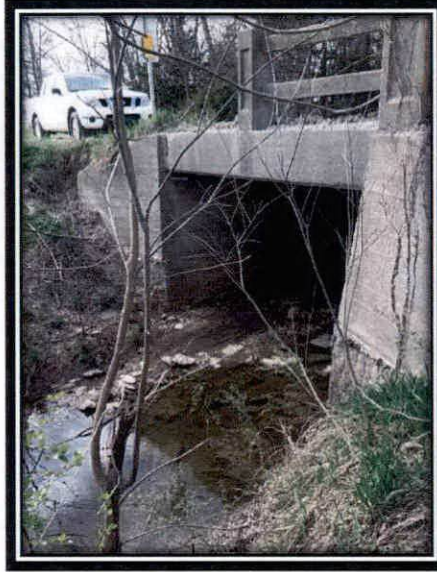
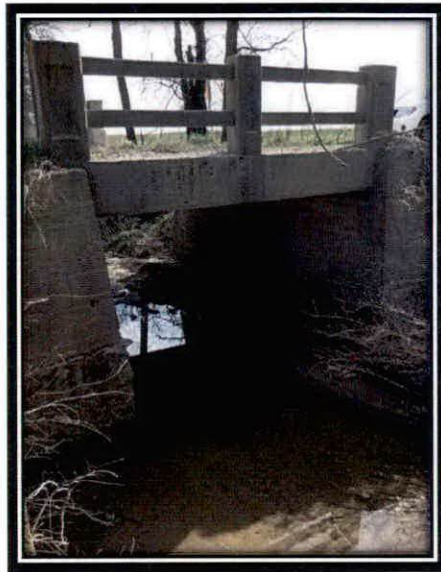


| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 13             | 24              | 4              | 3                        | 0                      | N/A                    | 4                 |

**Inspection Notes:**

Structure has failed.

## Culvert #1836: 347<sup>th</sup> Street east of Cedar Niles Road (Concrete Slab)

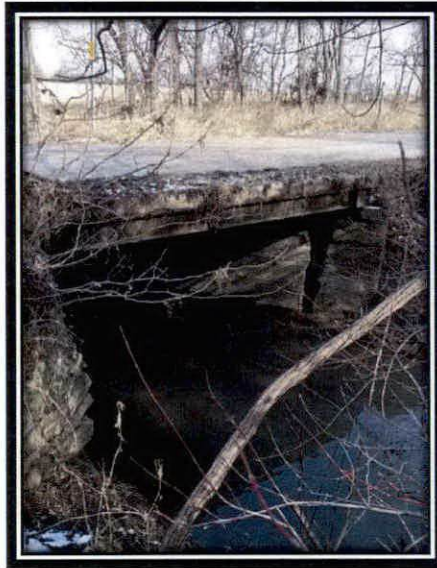


| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 12             | 18              | 6              | 6                        | 4                      | N/A                    | 3                 |

**Inspection Notes:**

Upstream abutment is being undermined; it also appears that the structure has been yielding/downstream movement.

## Culvert #2169: 367<sup>th</sup> Street east Jingo Road (Steel Stringer)



| Structure Span | Structure Width | Deck Condition | Superstructure Condition | Substructure Condition | Culvert/Pipe Condition | Channel Condition |
|----------------|-----------------|----------------|--------------------------|------------------------|------------------------|-------------------|
| 10             | 19              | 7              | 5                        | 4                      | N/A                    | 6                 |

|  |
|--|
| <b>Inspection Notes:</b>   |
| Masonry abutment beginning to fail, separation in road beginning . |

## FAS 270- Hospital Drive 0.33 w Hedge Lane (Guardrail)



**Inspection Notes:**

Guardrail outdated. Upgrade to crash worthy guardrail.

# MIAMI COUNTY STAFF REQUEST FOR COMMISSION ACTION

|   |   |
|---|---|
| <b>SUBMITTED BY:</b><br>Matthew Oehlert                   | <b>REQUESTED MEETING DATE:</b><br>Wednesday, February 10, 2021  |
| <b>DEPARTMENT:</b><br>Road and Bridge                     | <b>REQUESTED MEETING:</b><br><input type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING |
| <b>CONTACT INFORMATION:</b><br>moehlert@miamicountyks.org | <b>PROJECT / REFERENCE NUMBER:</b><br>18-15-CO-ST (665)/KDOT 61 N-0709-01   |

**AGENDA SUBJECT:**  
Metcalf 2.0 Reconstruction Agreement with KDOT

**AGENDA SUBJECT BACKGROUND / DESCRIPTION:**  
Reconstruction agreement with KDOT for Metcalf 2.0 Miami County Project # 18-15-CO-ST (665)/KDOT Project # 61 N-0709-01.

**REQUESTED ACTION / STAFF RECOMMENDATION:**  
Staff requests for Commission to sign Reconstruction Agreement with KDOT.

**BUDGET IMPACT:**

|  |  |  |
|--|--|--|
| <b>BUDGET AVAILABLE FOR THIS ITEM:</b> | <b>BUDGET REMAINING FOR THIS ITEM:</b>   |  |
| <b>FUND / LINE ITEM TO BE CHARGED:</b> | <b>ITEM BUDGETED?:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO | <b>CAPITAL PROJECT?:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO |

Matthew Oehlert
Digitally signed by Matthew Oehlert  
Date: 2021.02.04 09:03:21 -06'00'
2/4/2021

SUBMITTER'S SIGNATURE:
DATE:

FISCAL REVIEW

*Steve Johnson*  
SIGNATURE:

2/5/2021  
DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

*Shane Knull*  
SIGNATURE:

2-5-21  
DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes

No

NPG Account Number:

Mail Distribution Required:

Mailed By:

Yes

No

PROJECT NO. 61 N-0709-01  
STP-N070(901)  
RECONSTRUCTION  
MIAMI COUNTY, KANSAS

## AGREEMENT

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

### RECITALS:

- A. The County has requested and Secretary has authorized a reconstruction 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 the construction and maintenance of county roads utilizing federal funds.
- C. The Secretary and the County desire to construct the Project.
- D. Counties are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of roads and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

**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. **“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.
3. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
4. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.

5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
6. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
7. **“County”** means Miami County, Kansas, with its place of business at 201 S, Pearl, Paola, KS 66071.
8. **“Design Plans”** means 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.
9. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
10. **“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.
11. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
12. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
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, acting on the Secretary’s own behalf and on behalf of the FHWA, 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 County.
18. **“Preliminary Engineering”** 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”** means all phases and aspects of the Construction endeavor to be undertaken by the County, as and when authorized by the Secretary prior to Letting, being: **roadway reconstruction with curb and gutter, integrated trail on the east side of Metcalf Road from W. 287<sup>th</sup> Street to S 2<sup>nd</sup> Street, sidewalk on the west side of Metcalf Road from S. 10<sup>th</sup> Street to S. 2<sup>nd</sup> Street, traffic signals, and pedestrian crossing upgrades at Thomas Drive and S. 5<sup>th</sup> Street on Metcalf Road Louisburg, Kansas, and is the subject of this Agreement.**
20. **“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.
21. **“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.
22. **“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.
23. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.
24. **“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, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the County 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 directives to obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the County. The Secretary further agrees, as agent for the County, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the County.

3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the County 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 County defends a third party's claim, the Contractor shall indemnify the Secretary and the County for damages paid to the third party and all related expenses either the Secretary or the County or both incur in defending the claim.

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, but not to exceed \$3,100,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$3,875,000.00 for the Project. The Secretary shall not be responsible for the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project.

5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs 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 Project shall be undertaken, prosecuted and completed for and on behalf of the County by the Secretary acting in all things as its agent, and the County hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project 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 instead of by its agent. The Secretary is authorized by the County to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

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. **Conformity with State and Federal Requirements.** The County shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

4. **Design and Specifications.** The County shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the County shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The County shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the County and any Consultant with whom the County has contracted to perform services for the Project. In addition, any contract between the County and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any contract between the County and any Consultant with whom the County has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the County (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- (c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the County and the Consultant. Such language shall read:

“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."

7. **Responsibility for Adequacy of Design.** The County shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary's representatives is not intended to and shall not be construed to be an undertaking of the County's and its Consultant's duty to provide adequate and accurate Design Plans for the Project. 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 Design Plans for the Project, or any other work performed by the Consultant or the County.

8. **Authorization of Signatory.** The County shall authorize a duly appointed representative to sign for the County any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

9. **Right of Way.** The County agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The County will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The County agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The County shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The County further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) **Right of Way Documentation.** The County will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The County further agrees to 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 directives for the participation of federal funds in the cost of the Project. The County agrees copies of all documents, including recommendations and

coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) Relocation Assistance. The County will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) Non-Highway Use of Right of Way. Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public road purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) Trails and Sidewalks on KDOT Right of Way. *Intentionally Deleted.*

(f) Use of County Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the County, lying inside or outside the limits of the County as shown on the final Design Plans, for the purpose of constructing the Project.

10. Removal of Encroachments. The County 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 County and the owner of the Encroachment 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.

11. Future Encroachments. Except as provided by state and federal laws, the County 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 the distance permitted by the National Fire Code.

12. Utilities. The County agrees to the following with regard to Utilities:

(a) Utility Relocation The County 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 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) Status of Utilities. The County shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The County will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The County shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the County as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The County shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the County's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing road surface. The County will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The County shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of road or highway improvements.

(e) Indemnification. To the extent permitted by law, the County will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the County except as provided by state and federal laws.

13. Hazardous Waste. The County agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The County shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The County shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The County will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of

Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The County shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The County shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the County in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the County has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The County reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

14. Inspections. The County is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the County or the Consultant. The Secretary does not undertake for the benefit of the County, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The County will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The County may require additional clothing requirements for adequate visibility of personnel.

15. Traffic Control. The County agrees to the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The County shall provide a temporary traffic control plan within the Design Plans, which includes the County's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The County's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the County's agent with full authority to

determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the County of the determinations made pursuant to this section.

(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 manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) Parking Control. The County will control parking of vehicles on the county roads throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the road.

(d) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The County shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

16. Access Control. The County will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the County other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

17. Maintenance. When the Project is completed and final acceptance is issued the County will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the County will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

18. Financial Obligation. The County will be responsible for twenty percent (20%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, up to \$3,875,000.00 for the Project. In addition, the County agrees to be responsible for one hundred percent (100%) of the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering that exceed \$3,875,000.00 for the Project. Further, the County agrees to be responsible for one hundred percent (100%) of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project. The County shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

19. Remittance of Estimated Share. The County shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The County will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of County Funds received by the County from the Secretary. The date indicated for the County to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

20. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

21. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the County shall 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 and all costs incurred by the County 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.

22. **Cancellation by County.** If the County cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The County agrees to reimburse the Secretary within thirty (30) days after receipt by the County of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

#### ARTICLE IV

##### 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. **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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **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.

***The signature pages immediately follow this paragraph.***

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

ATTEST:

MIAMI COUNTY, KANSAS

\_\_\_\_\_  
COUNTY CLERK (Date)

\_\_\_\_\_  
CHAIRPERSON

(SEAL)

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
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)

# MIAMI COUNTY STAFF REQUEST FOR COMMISSION ACTION

|   |   |
|---|---|
| <b>SUBMITTED BY:</b><br>Matthew Oehlert                   | <b>REQUESTED MEETING DATE:</b><br>Wednesday, February 10, 2021  |
| <b>DEPARTMENT:</b><br>Road and Bridge                     | <b>REQUESTED MEETING:</b><br><input type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING |
| <b>CONTACT INFORMATION:</b><br>moehlert@miamicountyks.org | <b>PROJECT / REFERENCE NUMBER:</b><br>20-03-SB (672)/KDOT 61 C-5047-01  |

**AGENDA SUBJECT:**  
 FAS 250 ER-Slope Repair Agreement with KDOT

**AGENDA SUBJECT BACKGROUND / DESCRIPTION:**  
 ER-Slope Repair Agreement with KDOT for FAS 250 Rehabilitation Miami County Project # 20-03-SB (672)/KDOT Project # 61 NC-5047-01.

**REQUESTED ACTION / STAFF RECOMMENDATION:**  
 Staff requests for Commission to sign ER-Slope Repair Agreement with KDOT.

**BUDGET IMPACT:**

|  |  |  |
|--|--|--|
| <b>BUDGET AVAILABLE FOR THIS ITEM:</b> | <b>BUDGET REMAINING FOR THIS ITEM:</b>   |  |
|  |  |  |
| <b>FUND / LINE ITEM TO BE CHARGED:</b> | <b>ITEM BUDGETED?:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO | <b>CAPITAL PROJECT?:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO |


 Digitally signed by Matthew Oehlert  
 Date: 2021.02.04 09:02:46 -06'00'

2/4/2021

SUBMITTER'S SIGNATURE:

DATE:

FISCAL REVIEW

*Steve Lyman*  
SIGNATURE:

*2/5/2021*  
DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

*Shane Kull*  
SIGNATURE:

*2-5-21*  
DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

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Yes

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Mailed By:

Yes

No

PROJECT NO. 61 C-5047-01  
ER-C504(701)  
EMERGENCY RELIEF-SLOPE REPAIR  
MIAMI COUNTY, KANSAS

## AGREEMENT

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

### RECITALS:

- A. Under the terms of the 23 U.S.C. § 125, funds are available for the repair or reconstruction of roads and bridges on Federal-Aid Highway Systems that suffered serious damage from natural disasters or catastrophic failures from external causes.
- B. The County has requested assistance and the Governor of Kansas has officially proclaimed an emergency in the County, and the Secretary has made application for emergency funds to restore roadways and bridges in the County located on the Federal-aid Major Collector System.
- C. The County has requested and Secretary has authorized a county road Project, as further described in this Agreement.
- D. The Secretary and the County are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of county roads utilizing federal funds.
- E. The Secretary and the County desire to construct the Project.
- F. Counties are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of roads and state highways, provided however, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

**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. **“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.
3. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
4. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
6. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
7. **“County”** means Miami County, Kansas, with its place of business at 201 S. Pearl, Paola, KS 66071.
8. **“Design Plans”** means 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.
9. **“Detailed Damage Inspection Report” or “DDIR”** means the report prepared by FHWA which contains the description of emergency repair work performed and permanent restoration work to be performed by the County
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. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
13. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et*

*seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.

14. **“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.
15. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
16. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
17. **“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.
18. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the County.
19. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
20. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the County, as and when authorized by the Secretary prior to Letting, being: **repairing a slope failure on Hedge Lane, 8.8 miles south and 1.3 miles east of Paola over BNSF in Miami County, Kansas, as outlined on the FHWA approved DDIR**, 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, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Technical Information on Right of Way Acquisition.** The Secretary will provide technical information upon request to help the County 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 directives to obtain participation of federal funds in the cost of the Project.

2. **Letting and Administration by KDOT.** The Secretary shall Let the contract for the Project and shall award the contract to the lowest Responsible Bidder upon concurrence in the award by the County. The Secretary further agrees, as agent for the County, to administer the Construction of the Project in accordance with the final Design Plans, as required by FHWA, to negotiate with and report to the FHWA and administer the payments due the Contractor or the Consultant, including the portion of the cost borne by the County.

3. **Indemnification by Contractors.** The Secretary will require the Contractor to indemnify, hold harmless, and save the Secretary and the County 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 County defends a third party’s claim, the Contractor shall indemnify the Secretary and the County for damages paid to the third party and all related expenses either the Secretary or the County or both incur in defending the claim.

4. **Payment of Costs.** The Secretary agrees to be responsible for eighty percent (80%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering for the Project. The Secretary will not be responsible for any of the total actual costs of Right of Way or Utility adjustments for the Project.

5. **Final Billing.** After receipt of FHWA acknowledgement of final voucher claim, the Secretary’s Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs 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 Project shall be undertaken, prosecuted and completed for and on behalf of the County by the Secretary acting in all things as its agent, and the County hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection with the Project 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 instead of by its agent. The Secretary is authorized by the County to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

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. **Conformity with State and Federal Requirements.** The County shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Local Projects LPA Project Development Manual, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Road Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Transportation Safety and Technology's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the FHWA pertaining to the Project.

4. **Design and Specifications.** The County shall be responsible to make or contract to have made Design Plans for the Project.

5. **Submission of Design Plans to Secretary.** Upon their completion, the County shall have the Design Plans submitted to the Secretary by a licensed professional engineer attesting to the conformity of the Design Plans with the items in Article III, paragraph 3 above. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies.

6. **Consultant Contract Language.** The County shall include language requiring conformity with Article III, paragraph 3 above, in all contracts between the County and any Consultant with whom the County has contracted to perform services for the Project. In addition, any contract between the County and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 3 above. In addition, any

contract between the County and any Consultant with whom the County has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) Progress Reports. Language requiring the Consultant to submit to the County (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.
- (c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the County and the Consultant. Such language shall read:

“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.”

7. Responsibility for Adequacy of Design. The County shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the County’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. 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 Design Plans for the Project, or any other work performed by the Consultant or the County.

8. Authorization of Signatory. The County shall authorize a duly appointed representative to sign for the County any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

9. **Right of Way.** The County agrees to the following with regard to Right of Way:

(a) **Right of Way Acquisition.** The County will, in its own name, as provided by law, acquire by purchase, dedication or condemnation all the Right of Way shown on the final Design Plans in accordance with the schedule established by KDOT. The County agrees the necessary Right of Way shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The County shall certify to the Secretary, on forms provided by the KDOT's Bureau of Local Projects, such Right of Way has been acquired. The County further agrees it will have recorded in the Office of the Register of Deeds all Right of Way, deeds, dedications, permanent easements and temporary easements.

(b) **Right of Way Documentation.** The County will provide all legal descriptions required for Right of Way acquisition work. Right of Way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the Right of Way descriptions. The County further agrees to 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 directives for the participation of federal funds in the cost of the Project. The County agrees copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be delivered within the time limits set by the Secretary.

(c) **Relocation Assistance.** The County will contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The Parties mutually agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

(d) **Non-Highway Use of Right of Way.** Except as otherwise provided, all Right of Way provided for the Project shall be used solely for public road purposes. If federal funds are used in the acquisition of Right of Way, any disposal of or change in the use of Right of Way or in access after Construction of the Project will require prior written approval by the Secretary.

(e) **Trails and Sidewalks on KDOT Right of Way.** *Intentionally Deleted.*

(f) Use of County Right of Way. The Secretary shall have the right to utilize any land owned or controlled by the County, lying inside or outside the limits of the County as shown on the final Design Plans, for the purpose of constructing the Project.

10. Removal of Encroachments. The County 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 County and the owner of the Encroachment 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.

11. Future Encroachments. Except as provided by state and federal laws, the County 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 the distance permitted by the National Fire Code.

12. Utilities. The County agrees to the following with regard to Utilities:

(a) Utility Relocation The County 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 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) Status of Utilities. The County shall furnish the Secretary a list identifying existing and known Utilities affected, together with locations and proposed adjustments of the same and designate a representative to be responsible for coordinating the necessary removal or adjustment of Utilities.

(c) Time of Relocation. The County will expeditiously take such steps as are necessary to facilitate the early adjustment of any Utilities, initiate the removal or adjustment of the Utilities, and proceed with reasonable diligence to prosecute this work to completion. The County shall certify to the Secretary on forms supplied by the Secretary that all Utilities required to be moved prior to Construction have either been moved or a date provided by the County as to when, prior to the scheduled Letting and Construction, Utilities will be moved. The County shall move or adjust or cause to be moved or adjusted all necessary Utilities within the time specified in the County's certified form except those necessary to be moved or adjusted during Construction and those which would disturb the existing road surface. The County will initiate and proceed to complete adjusting the remaining Utilities not required to be moved during Construction so as not to delay the Contractor in Construction of the Project.

(d) Permitting of Private Utilities. The County shall certify to the Secretary all privately owned Utilities occupying public Right of Way required for the Construction of the Project are permitted at the location by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations required as a result of road or highway improvements.

(e) Indemnification. To the extent permitted by law, the County will indemnify, hold harmless, and save the Secretary and the Contractor for damages incurred by the Secretary and Contractor because identified Utilities have not been moved or adjusted timely or accurately.

(f) Cost of Relocation. Except as provided by state and federal laws, the expense of the removal or adjustment of the Utilities located on public Right of Way shall be borne by the owners. The expense of the removal or adjustment of privately owned Utilities located on private Right of Way or easements shall be borne by the County except as provided by state and federal laws.

13. Hazardous Waste. The County agrees to the following with regard to Hazardous Waste:

(a) Removal of Hazardous Waste. The County shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The County shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Letting. The County will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste. The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The County shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Letting or during Construction.

(c) Hazardous Waste Indemnification. The County shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the County in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the County has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The County reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

14. **Inspections.** The County is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the County or the Consultant. The Secretary does not undertake for the benefit of the County, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. The County will require at a minimum all personnel performing Construction Engineering to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. The agreement for inspection services must contain this requirement as a minimum. The County may require additional clothing requirements for adequate visibility of personnel.

15. **Traffic Control.** The County agrees to the following with regard to traffic control for the Project:

(a) **Temporary Traffic Control.** The County shall provide a temporary traffic control plan within the Design Plans, which includes the County's plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian facilities in the public Right of Way within the Project Limits. The County's temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the County's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the County of the determinations made pursuant to this section.

(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 manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to FHWA approval.

(c) **Parking Control.** The County will control parking of vehicles on the county roads throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the road.

(d) **Traffic Movements.** The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The County shall adopt and enforce rules and regulations governing

traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

16. **Access Control.** The County will maintain the control of access rights and prohibit the construction or use of any entrances or access points along the Project within the County other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

17. **Maintenance.** When the Project is completed and final acceptance is issued the County will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the County will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

18. **Financial Obligation.** The County will be responsible for twenty percent (20%) of the total actual costs of Preliminary Engineering, Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering for the Project. The County will be responsible for one hundred percent (100%) of the total actual costs of Right of Way and Utility adjustments for the Project. The County shall also pay for any Non-Participating Costs incurred for the Project along with the associated Non-Participating Construction Engineering costs.

19. **Remittance of Estimated Share.** The County shall deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The County will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of County Funds received by the County from the Secretary. The date indicated for the County to deposit its estimated share of the total Project expenses is fifty (50) days after the Letting date.

20. **Payment of Final Billing.** If any payment is due to the Secretary, such payment shall be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

21. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the County shall 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 and all costs incurred by the County 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.

22. **Cancellation by County.** If the County cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The County agrees to reimburse the Secretary within thirty (30) days after receipt by the County of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

## ARTICLE IV

### 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. **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.
3. **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.
4. **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.
5. **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.
6. **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.
7. **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.

***The signature pages immediately follow this paragraph.***

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

ATTEST:

MIAMI COUNTY, KANSAS

\_\_\_\_\_  
COUNTY CLERK (Date)

\_\_\_\_\_  
CHAIRPERSON

(SEAL)

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

Kansas Department of Transportation  
Secretary of Transportation

By: \_\_\_\_\_ (Date)  
Burt Morey, P.E.  
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)

# MIAMI COUNTY

## STAFF REQUEST FOR COMMISSION ACTION

Print Form

|  |  |
|--|--|
| <b>SUBMITTED BY:</b><br>Dave Ediger/Frank Burrow | <b>REQUESTED MEETING DATE:</b><br>February 10th, 2021  |
| <b>DEPARTMENT:</b><br>EMS                        | <b>REQUESTED MEETING:</b><br><input checked="" type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING |
| <b>CONTACT INFORMATION:</b><br>913-294-5010      | <b>PROJECT / REFERENCE NUMBER:</b><br>NA   |

**AGENDA SUBJECT:**  
PURCHASE AGREEMENT FOR THUNDERSTRUCK BUMPERS FOR AMBULANCES

**AGENDA SUBJECT BACKGROUND / DESCRIPTION:**  
EMS IS SEEKING COMMISSION APPROVAL TO PURCHASE SIX (6) BUMPERS FOR AMBULANCES FROM THUNDERSTRUCK BUMPERS. THIS IS A HEAVY-DUTY BUMPER THAT WILL REDUCE COST OF REPAIRS FROM FRONT END COLLISIONS WITH NATURAL WILDLIFE IN THE AREA. BUMPER COST IS \$1,790.00 EACH, TOTAL \$10,740.00, PLUS INSTALLATION. INSTALLATION COST WILL BE AVAILABLE AT THE STUDY SESSION.

**REQUESTED ACTION / STAFF RECOMMENDATION:**  
COMMISSION APPROVAL FOR PURCHASE AND INSTALLATION OF SIX (6) BUMPERS FROM THUNDERSTRUCK BUMPERS FOR EMERGENCY MEDICAL SERVICES.

**BUDGET IMPACT:**  
NA

|   |   |  |
|---|---|--|
| <b>BUDGET AVAILABLE FOR THIS ITEM:</b><br>NA                | <b>BUDGET REMAINING FOR THIS ITEM:</b><br>NA  |  |
| <b>FUND / LINE ITEM TO BE CHARGED:</b><br>0100-307-3502-000 | <b>ITEM BUDGETED?:</b><br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | <b>CAPITAL PROJECT?:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO |

*Frank Burrow*

SUBMITTER'S SIGNATURE:

*2/5/2021*

DATE:

FISCAL REVIEW

*Steve Johnson*  
SIGNATURE:

*2/5/2021*  
DATE:

LEGAL REVIEW

SIGNATURE:

DATE:

ADMINISTRATOR REVIEW

*Shane Knull*  
SIGNATURE:

*2-5-21*  
DATE:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes

No

NPG Account Number:

Mail Distribution Required:

Mailed By:

Yes

No



401 COTTAGE AVE  
ABILENE, KS 67410

# Quote

|           |         |
|-----------|---------|
| Date      | Quote # |
| 1/20/2021 | 12113   |

|   |
|---|
| Customer  |
| Miami County EMS<br>Frank Burrow<br>fburrow@miamicountyks.org<br>913-548-9325 |

|   |
|---|
| Ship To   |
| Miami County EMS<br>Frank Burrow<br>fburrow@miamicountyks.org<br>913-548-9325 |

|        |     |
|--------|-----|
| P.O. # | Rep |
| Quote  | KNW |

| Item             | Description   | Quantity | Cost     | Total    |
|------------------|---|----------|----------|----------|
| FEV08-200        | 2008+ FORD E-250/450 ECONOLINE VAN ELITE SERIES - DIAMOND PLATE STEEL - FRONT END REPLACEMENT - GLOSS BLACK POWDER COAT   | 1        | 1,420.00 | 1,420.00 |
| AIR HORN MOUN... | BUELL AIR HORN 10" 1061 PASSENGER SIDE - MOUNTED IN CENTER SECTION OF BUMPER SHELL<br>BUELL AIR HORN 12" 1062 DRIVER SIDE - MOUNTED IN CENTER SECTION OF BUMPER SHELL | 1        | 150.00   | 150.00   |
| SPEAKER MOUN...  | SPEAKER MOUNT   | 2        | 60.00    | 120.00   |
| SPECIAL CUT      | SPECIAL CUT TO ADD SPEAKER & AIR HORN MOUNTS  | 1        | 100.00   | 100.00   |
|                  | *QUOTE DOES NOT INCLUDE FREIGHT CHARGES   |          |          |          |

|                        |              |            |
|------------------------|--------------|------------|
| QUOTE - NOT AN INVOICE | <b>Total</b> | \$1,790.00 |
|------------------------|--------------|------------|

# MIAMI COUNTY

## STAFF REQUEST FOR COMMISSION ACTION

|   |  |
|---|--|
| <b>SUBMITTED BY:</b><br>Teresa Reeves       | <b>REQUESTED MEETING DATE:</b><br>February 10, 2021  |
| <b>DEPARTMENT:</b><br>Planning              | <b>REQUESTED MEETING:</b><br><input checked="" type="checkbox"/> STUDY SESSION <input checked="" type="checkbox"/> REGULAR MEETING |
| <b>CONTACT INFORMATION:</b><br>913-294-9553 | <b>PROJECT / REFERENCE NUMBER:</b><br>NA   |

**AGENDA ITEM / SUBJECT:**  
Temporary Alcohol Sales at Fairgrounds


**ITEM BACKGROUND / DESCRIPTION:**

Consideration of a resolution to allow the temporary sale of alcoholic beverages at the Miami County Fairgrounds property no more than 4 times per year, in accordance with KSA 41-1201 and the Alcohol Beverage Control Rules and Regulations. The subject property is located outside of the city limits of southern Paola, southeast of Wallace Park, in the NW 1/4 of Section 21, Twp. 17, Range 23, and SW 1/4 of Section 16, Township 17, Range 23, Paola Twp. Submitted by the Miami County Fair Board of Directors, John Menefee, President.

**REQUESTED ACTION / STAFF RECOMMENDATION:**

Sign the attached Resolution thereby authorizing the Fair Board to obtain temporary permits from ABC for the sale of alcoholic beverages.

|                          |  |   |
|--------------------------|--|---|
| <b>BUDGET IMPACT:</b>    |  |   |
| <b>BUDGET AUTHORITY:</b> | <b>REMAINING BUDGET ALLOCATION:</b>  |   |
| <b>FUND / LINE ITEM:</b> | <b>FUNDS BUDGETED:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO | <b>CAPITAL PROJECT:</b><br><input type="checkbox"/> YES <input type="checkbox"/> NO |

  
 \_\_\_\_\_  
 SUBMITTER'S SIGNATURE:

2/03/21  
 \_\_\_\_\_  
 DATE:

FISCAL REVIEW

*Steve Lyman*

SIGNATURE:

*2/5/2021*

DATE:

Comments:

LEGAL REVIEW

SIGNATURE:

DATE:

Comments:

ADMINISTRATOR REVIEW

*Steve Krull*

SIGNATURE:

*2-5-21*

DATE:

Comments:

COUNTY CLERK'S OFFICE USE

Commission Action Taken:

Accepted

Denied

Postponed

Acknowledged

Date Action Taken:

Required Follow-up Date:

Publication Required:

Submitted to Publication By:

Yes

No

NPG Account Number:

102898

Mail Distribution Required:

Mailed By:

Yes

No

## Miami County Planning Department

### BOCC Summary

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**DATE:** February 10, 2021 – BOCC Meeting  
**TO:** Board of County Commissioners  
**FROM:** Teresa Reeves, Planning Director  
**RE:** Resolution to Allow Temporary Alcohol Sales at Fairgrounds

---

**Property Owner(s)** Miami County Fair Association  
**Current Zoning** Countryside / Floodplain  
**Comp Plan** Rural Residential (10 to 15-Ac. density)  
Paola Communication Area  
**Acreage** Small area within 36 Acres +/-  
**CAMA #** 135-21-0-20-01-001.00-0;  
135-21-0-00-00-006.01-0;  
135-16-0-30-43-029.00-0

---

**Surrounding Zoning** City limits of Paola; Countryside; Floodplain  
**Surrounding Uses** Recreational/park area; Single family residential; Agricultural

#### Background

On June 25, 2020, the Fair Board issued a Resolution requesting the county pursue the necessary changes to allow the Fair Board to sell alcoholic beverages in accordance with KSA 41-1201 and ABC regulations. For the past couple of years, the Fair Board has requested how they could sell alcoholic beverages in a “beer tent” or specified area on the property. The current zoning on the property is Countryside, which does not allow the sale of alcoholic beverages. After much research and conversations with the Kansas Department of Revenue, Alcohol Beverage Control (ABC), staff learned that ABC could issue a temporary permit to the Fair Board for temporary sale of alcoholic beverages for no more than 3 consecutive days, and no more than 4 times per year, IF the Board of County Commissioners authorized such by Resolution which “suspends” these zoning restrictions applied to that property on those specific dates listed in the permit.

With the Approving Resolution, the Fair Board will need to obtain a temporary permit from ABC for “each” 3-day event, with no more than 4 temporary permits allowed per calendar year. As part of the temporary permit, a specific area of the property will need to be designated and enclosed for the sale and consumption of alcohol. The specific area the Fair Board has identified at this time is located between the Arena and Building 10. Staff included all of the Fair Association property in this legal description to provide flexibility in case the location of the beer garden needs to be moved into one of the buildings or onto a different part of the property.

**Recommendation**

Staff recommends the County Commission consider the request of the Fair Board and sign the attached Resolution thereby authorizing the Fair Board to obtain temporary permits from the Kansas Department of Revenue, Alcohol Beverage Control.

**Attachments:** Fair Board Resolution  
KSA 41-1201  
Vicinity Map  
Approving Resolution

## RESOLUTION of the Miami County Fair Board

Resolution to commence the process of adopting applicable zoning changes or amendments to the "Countryside" zoning regulation that would allow for the temporary sale of alcoholic beverages.

WHEREAS, in response to a letter received from County Counselor David Heger dated 06/12/2020 under direction of the Miami County Commission via their regularly scheduled meeting on 06/10/2020; and

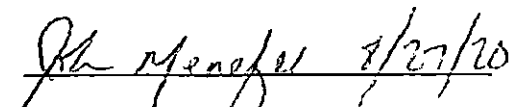
WHEREAS; the Miami County Fair Board is petitioning the Miami County Commissioners, Counselor, and Zoning Director to pursue the necessary changes or amendments to the "Countryside" zoning classification; and

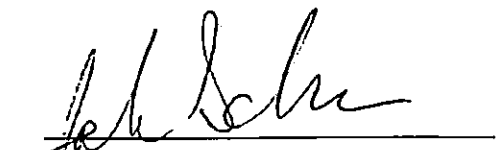
WHEREAS; such zoning change or amendment would the allow for the temporary sale of alcoholic beverages on a temporary basis pursuant to Kansas Statutes and ABC regulation.

PASSED AND ADOPTED by the Miami County Fair Board unanimously at a regular meeting of said Board, held on the 25<sup>th</sup> day of June, 2020.

ATTEST:

Miami County Fair Board of Directors

  
John Menefee (President)

  
John Scherman (Vice President)

  
Emily McCrea (Secretary)

**41-1201. Temporary permits; application requirements; issuance; employment restrictions.** (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on licensed or unlicensed premises, or on premises that are otherwise subject to a separate temporary permit, that may be open to the public, subject to the terms of such permit. A temporary permit shall also authorize the permit holder to sell, in accordance with rules and regulations adopted by the secretary, alcoholic liquor at a charitable auction, or one or more limited issue porcelain containers containing alcoholic liquor.

(b) A temporary permit holder may charge a fee for entrance into the premises described in the permit, or any portion thereof.

(c) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(d) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought, unless the director waives such requirement for good cause. The application shall be upon a form prescribed by the director. Each application shall be electronically submitted and accompanied by a non-refundable permit fee of \$25 for each day for which the permit is issued, and such fee shall be paid by a check or credit card in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(e) ~~Each application for a temporary permit shall specify the premises for which they are issued, including a diagram of the premises covered by the temporary permit. The diagram shall clearly show the boundaries of the premises, entrances to and exits from the premises and the area in which the service of alcoholic liquor would take place. A temporary permit shall be issued only for premises where the city, county or township zoning code allows the use for which the permit is issued. No temporary permit shall be issued for premises that are not located in a county where the qualified electors of the county:~~

(1) (A) Approved, by a majority vote of those voting thereon, to adopt the proposition amending section 10 of article 15 of the constitution of the state of Kansas at the general election in November, 1986; or

~~(B) have approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and~~

~~(2) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.~~

(f) (1) A temporary permit may be issued for the consumption of alcoholic liquor on a city, county or township street, alley, road, sidewalk or highway for an event if: (A) Such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the governing body of such city, county or township for such event; (B) a written request for such consumption and possession of such alcoholic liquor has been made to the local governing body; and (C) the event has been approved by the governing body of such city, county or township by ordinance or resolution.

The boundaries of any such event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such event.

(2) Drinking establishments that are immediately adjacent to, or located within the licensed premises of an event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the event, for the duration of the temporary permit issued for such event.

(3) Each licensee selling alcoholic liquor for consumption on the premises of an event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(4) Each temporary permit holder selling alcoholic liquor for consumption on the permit premises shall be liable for all violations of laws governing the sale and consumption of alcoholic liquor that occur in areas covered by multiple temporary permits.

(g) (1) Except as otherwise provided in this subsection, a temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. An applicant may not be issued more than four temporary permits in a calendar year.

(2) The director may issue a sufficient number of temporary permits as required by the state fair board, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine in its original, unopened container and the serving by the drink of wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose subject to the

conditions imposed by the state fair board. Nothing in this paragraph shall be construed to limit the number of temporary permits the director may issue for the sale of wine or beer, or both, on the state fairgrounds consistent with the requirements of the state fair board.

(3) For an event approved by the governing body of a city, county or township pursuant to subsection (e)(1), the director may issue a temporary permit, which may, at the director's discretion, be valid for the entire period of such event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days.

(h) An application for a temporary permit may be rejected by the director if:

(1) The applicant has been granted four permits in the current calendar year;

(2) the application was not filed with the director at least 14 days prior to the event;

(3) the applicant, or any officer, director, partner, registered agent, trustee, manager or owner of the applicant has previously owned or operated any entity holding a temporary permit, club, drinking establishment or caterer's license, had such permit or license surrendered, and at the time such permit or license was surrendered had been ordered to appear and show cause why the permit or license should not be revoked or suspended;

(4) the applicant has designated an area for an event that was the subject of the order to appear and show cause as set forth in paragraph (3), and it appears that the new application for a temporary permit covering the premises is an attempt to avoid any possible remedial action taken by the director against the former permit or license holder; or

(5) the applicant has had a license or permit revoked under the club and drinking establishment act, or has been convicted of a violation of the Kansas liquor control act, the club and drinking establishment act, the Kansas cereal malt beverage act or the provisions of K.S.A. 79-41a01 et seq., and amendments thereto.

(i) (1) A temporary permit holder may purchase and possess alcoholic liquor for resale for a period of three days prior to the first day of sale of such alcoholic liquor. A distributor may, without any further permission from the director, deliver such alcoholic liquor to the permit premises.

(2) If a licensee has sold alcoholic liquor to a temporary permit holder, and a distributor directly delivers such alcoholic liquor to such temporary permit holder, but such licensee's normal hours of operation make immediate payment to the distributor impossible, the licensee may pay the retailer and the retailer may pay the distributor for such alcoholic liquor within 48 hours of the sale.

(3) Within three business days after the end of an event conducted pursuant to a temporary permit, the temporary permit holder may sell back to the retailer or farm winery from whom alcoholic liquor was purchased any alcoholic liquor sold to the temporary permit holder for such event.

(4) Upon written permission from the director and after four business days after the end of an event conducted pursuant to a temporary permit, the temporary permit holder may sell back to the licensee from whom alcoholic liquor was purchased any alcoholic liquor sold to the temporary permit holder for such event.

(j) A temporary permit shall not be transferable or assignable.

(k) Each temporary permit holder shall not employ or use the services of any person:

(1) Who is under the age of 18 years to serve alcoholic liquor;

(2) who is under the age of 21 years to mix or dispense drinks containing alcoholic liquor;

(3) who is under the age of 21 and not supervised by the temporary permit holder or an employee who is at least 21 years of age;

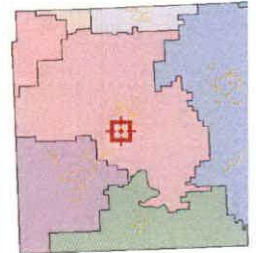
(4) who has been convicted of a felony or of any crime involving a morals charge to dispense, mix or serve alcoholic liquor; or

(5) who has been convicted within the previous two years of a violation of any intoxicating liquor law of this state, any other state or the United States, to dispense, mix or serve alcoholic liquor.








**History:** L. 2019, ch. 57, § 1; May 2.



Overview



Legend

-  City Limits
-  Centerlines
-  Parcels
-  Lakes
- Flood Zones**
-  0.2 PCT ANNUAL CHANCE FLOOD HAZARD
-  A
-  AE

Parcel ID= 198280000001000  
 Acres= 15.172527949999999

Date created: 1/4/2021  
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Developed by  Schneider  
 GEOSPATIAL

**RESOLUTION**

**NO.** \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE TEMPORARY SALE OF  
ALCOHOLIC BEVERAGES AT  
THE MIAMI COUNTY FAIRGROUNDS**

WHEREAS, the Miami County Fair Board of Directors did pass and adopt a Resolution on June 25, 2020, petitioning the Miami County Commissioners, County Counselor and Zoning Director to pursue the necessary amendments to allow for the temporary sale of alcoholic beverages on a temporary basis pursuant to KSA 41-1201, and ABC regulations on the property owned by the Miami County Fair Association described in Section 1 below; and

WHEREAS, although the Fairground property is zoned Countryside (CS), which does not allow the sale of alcoholic beverages, KSA 41-1201 allows a temporary permit to be issued for the consumption of alcoholic liquor on specified property if the Board of County Commissioners authorizes the temporary sale of alcohol on said property by suspending the zoning restrictions for such sales no more than four (4) times per calendar year, with each occurrence being no more than three (3) consecutive days, the dates and hours of which shall be specified in the temporary permit; and

WHEREAS, in accordance with KSA 41-1201(e)(1)(B), Miami County has approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to KSA 41-2646, and amendments thereto, and (2) has not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to KSA 41-2646, and amendments thereto; and

WHEREAS, the Board of County Commissioners has reviewed the request of the Miami County Fair Board, and finds that the request for the temporary sale of alcoholic beverages during the annual fair, and two or three other timeframes during the year would allow the Fair Board to raise funds for the fair and fairgrounds, and not adversely affect the surrounding properties or the general public as enforced and provided by the Kansas Department of Revenue, Alcohol Beverage Control.

IT IS HEREBY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI COUNTY, KANSAS, that they hereby authorize temporary permits to be issued by the Kansas Department of Revenue, Alcohol Beverage Control on the Miami County, Kansas Fairgrounds property to allow alcoholic beverages to be sold no more than four (4) times per calendar year and no more than 3 consecutive days per occurrence in accordance with KSA 41-1201, and amendments thereto, subject to the revocation or

modification of said Resolution upon sufficient evidence that these regulations/stipulations have not been complied with, and/or this provision has resulted in adverse conditions at the Fairgrounds; and subject to compliance with all relevant codes and regulations, including the Floodplain Regulations, adopted by Miami County.

**Section 1:**

The property owned by the Miami County Fair Association, identified as Appraiser's Parcel No's 135-16-0-30-43-029.00-0; 135-21-0-20-01-001.00-0; and 135-21-0-00-00-006.01-0, and more particularly described by the legal descriptions as shown on Deeds recorded at the Miami County Register of Deeds Office, at Book 177 / Page 359, and Book 362 / Page 128.

The provisions in this resolution will become effective upon the adoption by the Board of County Commissioners and publication of the adopting resolution in the Official County newspaper. All zoning regulations of Miami County, Kansas affecting the use of the real property heretofore described, which are inconsistent with this resolution are hereby made inapplicable to said property until the Conditional Use Permit is vacated or is declared null and void.

ADOPTED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.

BOARD OF COUNTY COMMISSIONERS  
MIAMI COUNTY, KANSAS

\_\_\_\_\_  
BONNIE "ROB" ROBERTS, Chairman

ATTEST

\_\_\_\_\_  
TYLER VAUGHAN, Chairman Pro-tem

\_\_\_\_\_  
JANET WHITE, County Clerk

\_\_\_\_\_  
PHIL DIXON, Commissioner

\_\_\_\_\_  
GEORGE PRETZ, Commissioner

\_\_\_\_\_  
DANIEL GALLAGHER, Commissioner

Approved as to form and legality on \_\_\_\_\_ by \_\_\_\_\_.