

# Kansas Statewide Fiber Optic Infrastructure System Proposal and Contract

Between The  
Kansas Department of Transportation  
and  
Digital Teleport, Inc.

LETTING: August 25, 1998

\*\*\*\*\*

\* KANSAS DEPARTMENT OF TRANSPORTATION \*  
\* PROPOSAL \*

\*\*\*\*\*

NOTE: THIS PROJECT IS NOT FUNDED

1. Proposal of Digital Teleport, Inc for the construction and installation of a Fiber Optic Infrastructure System for improvement of state highway right-of-way, known as Project No. 106 K 7319-01 in the State of Kansas as shown by the Proposal Form.

2. All work to comply with the Standard Specifications, Code Requirements and Technical Standards identified in the Proposal Form.

3. The undersigned offers to provide a Fiber Optic Infrastructure System and Passive Network that meets the Minimum Technical Bid Requirements according to the terms and conditions of the Proposal Form. The undersigned bids \$ 0.00 for KDOT's Passive Network and Service. (If furnishing at no cost, include \$0.00 amount in space provided).

4. The undersigned offers to provide the following optional system provisions:  
All optional system provisions: Twelve (12) dark fibers; construction of system from Wichita to Oklahoma border

5. The undersigned agrees to execute a contract for the proposed work within ten(10) business days after notice of the award of the contract and the work shall be completed within the time limitations specified in the Project Schedule in the Proposal Form.

6. In submitting this bid, the undersigned declares that they are the only person interested in the said bid; that it is made without any connection with any person or persons making another bid for the same contract; that the bid is in all respects fair and without collusion, fraud or misrepresentation.

7. The undersigned further declares that they have carefully examined the plans, Proposal Form, and form of contract and that they have inspected the actual location of the work, together with the local sources of supplies, and have satisfied themselves as to all quantities and conditions, and understand that in signing this proposal they waive all rights to plead any misunderstanding regarding the same.

RELEASED FOR CONSTRUCTION

Date OCT 5 1998  
Don M. Tard  
Chief of Construction/Maintenance

Digital Teleport, Inc.  
(Name of Organization)  
By [Signature]  
President  
(Title of Person Signing)

**DTI**  
**DIGITAL**  
**TELEPORT, INC.**

*a State Regulated Telecommunications Utility*

August 25, 1998

**BY HAND DELIVERY AND FACSIMILE (785) 296-6944**

Mr. Dean Testa, P.E.  
Chief of Construction and Maintenance  
Kansas Department of Transportation  
915 SW Harrison  
Topeka, KS 66612

Re: KDOT Project No. 106 K-7319-01

Dear Mr. Testa:

Digital Teleport, Inc. (DTI) is very pleased to present this proposal to the Kansas Department of Transportation (KDOT) for a fiber optic infrastructure system along various routes in the State of Kansas outside of the Kansas City Metropolitan Area capable of supporting the ITS and other communications needs of KDOT into the next century ("Fiber Optic System"). Due to the complexity of this project and KDOT's request for a variety of technology solutions, DTI is perhaps uniquely suited and qualified to successfully manage this project.

**DTI Background**

DTI is a facilities-based communications company constructing a coast-to-coast fiber optic network to provide high capacity, ring redundant routes to be marketed to and used by other telecommunications carriers, which DTI believes will ultimately enhance competition in the consumer telecommunications markets. DTI has constructed fiber optic networks in Missouri and Arkansas, has agreements to acquire fiber optic routes in 20 other states and intends to construct or acquire routes in an additional 15 states. When completed, the DTI network will include approximately 18,500 route miles comprised of 19 regional rings interconnecting primary, secondary and tertiary cities in these states. DTI has public/private partnership agreements with the Missouri Department of Transportation, the Arkansas Department of Transportation and KDOT for the installation of ITS systems along restricted access roadways.

Mr. Dean Testa, P.E.

August 25, 1998

Page 2 of 3

### The DTI Proposal

DTI is offering to provide to KDOT a Fiber Optic System not only meeting, but also exceeding each and every capability requested in the KDOT request for proposal package (RFP). DTI is offering to construct a Fiber Optic System that fully meets all of the minimum technical system requirements set forth in the RFP, and provides to KDOT all of the requested optional builds and capabilities set forth in the RFP. Moreover, DTI is offering to KDOT additional enhancements to each of these systems.

DTI is offering to construct for KDOT, at no cost to KDOT other than use of the restricted access roadway rights-of-way, a Fiber Optic System comprised of the following elements:

#### ***The Passive Network***

- Two (2) 1.25" conduits along all requested interstate highways outside of the Kansas City Metropolitan Area, including the optional builds around Wichita and from Wichita to the Oklahoma border.
- Connection to the passive network to be provided in the Kansas City Metropolitan Area.
- 50% More Discretionary Handholes: A handhole at every interchange along the conduits throughout Kansas and at the requested fifty (50) discretionary locations, plus an additional twenty-five (25) discretionary locations.

#### ***The Lighted Network***

- An OC-12 lighted backbone network throughout all requested interstate highways outside of the Kansas City Metropolitan Area, including all optional builds around Wichita and from Wichita to the Oklahoma border, with service connectivity at the DS-1 level.
- Interface points for multiple DS-3s at all requested locations in Topeka, Salina, the two locations in Wichita and the Kansas City Fiber Optic Infrastructure System.
- Access to the backbone at requested locations in Lawrence, Topeka, Junction City, Salina, Newton, Wichita, the Oklahoma border, Hays, Oakley and Goodland.

Mr. Dean Testa, P.E.

August 25, 1998

Page 3 of 3

- Double the Amount of Requested Growth; Earlier Growth: Growth to two (2) OC-12s in five (5) years, with additional growth to an OC-48 window in ten (10) years.
- Access to Other State DOTs: DS-1 interconnections to the state departments of transportation in Missouri, Arkansas, Nebraska, Iowa, Oklahoma and Colorado to the extent DTI has connections to such locations.
- Free SONET Redundancy: SONET redundancy for the backbone route from Kansas City to Salina to the Oklahoma border.

### ***The Dark Fibers***

- Twice the Number of Requested Fibers: Twelve (12) dark fibers throughout all requested interstate highways outside of the Kansas City Metropolitan Area, including all optional builds around Wichita and from Wichita to the Oklahoma border.
- Handhole access to the twelve (12) dark fibers at every interchange.

DTI believes that the above offer which exceeds all aspects of the RFP, as well as its singular level of experience in ITS public-private partnerships and its experience with other KDOT projects, will set it apart from other proposals that might be received by KDOT. DTI looks forward to further discussions with KDOT regarding this proposal and invites any questions or clarifications KDOT may have regarding this proposal. Also enclosed is a bid bond in the required amount of \$10,000.

Sincerely,



Richard D. Weinstein  
President and Chief Executive Officer

# **KDOT PROJECT NO. 106 K-7319-01 Statewide Fiber Optic Infrastructure System PROPOSAL FORM**

## **ARTICLE I – CONTRACT SCOPE**

### **1. Introduction**

The Kansas Department of Transportation (KDOT) is seeking to develop its right-of-way assets for the building of a fiber optic infrastructure, providing KDOT with means for meeting current and future Intelligent Transportation System (ITS) needs. The goal of this project is to provide a fiber optic infrastructure that can be used to support the various aspects of ITS deployments within the State.

KDOT is offering the use of its right-of-way to interested companies with the intention of allowing these companies to install and operate communication networks along the right-of-way in exchange for dedicated channel capacity within the network for KDOT's ITS use, communication services for ITS and dedicated infrastructure components (a passive network of conduit and handholes and fiber) to support ITS deployment. It is not KDOT's intention to pay for the installation or provision of services and systems defined herein.

This Proposal Form defines the minimum physical, operational and performance characteristics and requirements for the Fiber Optic Infrastructure System to be provided pursuant to this project. This Proposal Form also allows options for different approaches to this project which will be considered by KDOT. Specific requirements for system operation for the portions of the fiber optic network built for the use of the Contractor only are at the discretion of the Contractor, with the exception that all construction methods, placement and operations within KDOT right-of-way shall conform to KDOT construction standards and requirements, the KDOT Utility Accommodation Policy and any applicable codes.

This Proposal Form includes the requirements for construction within KDOT's right-of-way, minimum standards and locations for service for KDOT, and some requirements for optoelectronic transmission equipment and related components that KDOT, in its judgment, feels are necessary to ensure proper communication of ITS.

## **2. Construction Requirements and Determination of Lowest Responsible Bidder**

This construction project is for the installation of a fiber optic infrastructure system capable of supporting the communication needs of the Kansas Department of Transportation along various routes within the State of Kansas, but outside of the Kansas City Metropolitan Area. The communication needs of KDOT are for the purpose of operating Intelligent Transportation Systems (ITS) in Kansas and allowing KDOT to communicate with other Departments of Transportation throughout the country.

The project is structured so that a contractor may bid on the minimum, technical system requirements for a responsive bid and, in addition, may bid on optional system provisions. The lowest responsible bidder will be that bidder who offers to construct and provide the minimum technical requirements and the most optional equipment and services and charges the lowest cost for the Passive Network and service. The Secretary will resolve a tied bid by selecting the bidder who has the most expertise in fiber optic installation and service. If no bidders offer to provide optional equipment and services, the lowest responsible bidder will be that bidder who offers to construct and provide the minimum technical requirements and charges the lowest cost for the Passive Network and service. The Secretary will resolve a tied bid in this instance also by selecting the bidder who has the most expertise in fiber optic installation and service. **The Secretary will reject any proposal that does not offer to construct and provide the minimum technical system requirements according to the terms and conditions in this Proposal Form.**

Bids will be due on August 25, 1998, no later than 1:00 p.m. and should be addressed to:

Mr. Dean Testa, P.E.  
Chief of Construction and Maintenance  
Kansas Department of Transportation  
915 SW Harrison  
Topeka, KS 66612

The minimum technical system requirements of this project and the optional system provisions are listed below. In addition, the contractor will comply with the remaining contract provisions contained within this Proposal Form.

## **3. Minimum Technical System Requirements for KDOT Proj. No.106 K-7319-01:**

The installation of two (2) ducts along all of the routes specified will be mandatory. The ducts will be 1-1/4" minimum diameter HDPE or PVC with pull ropes and duct

plugs installed. These ducts may be installed in the same trench or plow line as the contractor's conduit or innerduct. Handholes will be installed at or near all interchanges along the route to provide KDOT access to the ducts. In addition, 50 additional handholes are to be installed as specified above at locations to be determined in the future by KDOT.

The contractor will provide KDOT with a minimum of OC-12 lighted fiber optic service along the entire route specified with growth to an OC-24 over a ten year period in increments of DS-3. Service level at any given node shall be in a block of one or more DS-3 channels, minimum of one DS-3 per node site (except as noted below), and service connectivity to KDOT provided at DS-1. Disposition of the DS-3 channels to nodes will be detailed at a later date at KDOT's discretion, as will future growth. See Table 1 in Article IV for dates of service growth.

The Fiber Optic Infrastructure System will need to interface at key locations within the State of Kansas along the routes specified. At Topeka, the interface point should be near the Docking State Office Building; at Salina, the interface point should be near the Central Dispatch of the Kansas Highway Patrol; in Wichita, there will be two interface points, one of which should be near the Metro Engineer's office, the location of the other is to be determined. These interface points will require a minimum of two (2) DS-3's per site. Other interface locations will be determined at a later date. The Fiber Optic Infrastructure System will need to interface with the planned Kansas City Fiber Optic Infrastructure System at a demarcation point to be determined later. This interface will require, at minimum, the ability for the two systems to transmit data between each other at the rates specified above.

Options:

KDOT desires the contractor to provide KDOT with a minimum of six dark fibers along the specified routes, including any optional routes. KDOT also would like to have access to these dark fibers at every interchange through the handholes previously specified (except for the 50 handholes at discretionary locations). This is not a contract requirement for a responsive bid but will be considered in determining the lowest, responsible bidder.

East-West Route Across Kansas:

This route and the following requirements will be mandatory for the bid to be responsive. Along a route to be established by the contractor, off of I-70, the contractor will install a fiber optic infrastructure system to get from the Kansas City metro area's fiber optic system to I-70 at Topeka. On I-70, beginning in Topeka, the contractor will install a fiber optic infrastructure system along I-70 from Topeka to the Colorado border. A possible route between Kansas City and Topeka is K-10, starting near the K-10/I-435 junction, to Lawrence, through Lawrence to U.S. 24, then to Topeka to I-70.

The contractor will provide KDOT with lighted fiber optic service as specified above. Access to the backbone will be provided at seven points along the route, at or near Lawrence, Topeka, Junction City, Salina, Hays, Oakley and Goodland.

#### I-135 Route to Wichita

This route and the following requirements will be mandatory for the bid to be responsive. The contractor will install a fiber optic infrastructure system between I-70 and Wichita along I-135.

The contractor will provide KDOT with lighted fiber optic service as specified above. Access to the backbone will be provided at or near Salina, Newton, Wichita and eventually the Oklahoma border if that option is exercised by the contractor.

KDOT also requires that a ring fiber optic infrastructure system be installed around Wichita for future ITS services. This will include a DS-3 hub in Wichita at or near the Metro Engineer's office, and a second DS-3 hub in the city at a location to be determined, both of which KDOT can use to connect future ITS components to the contractor's backbone network through the passive duct or the dark fiber system, if provided.

#### Options:

The contractor may continue the fiber optic infrastructure system, including the passive network, and the dark fiber, if provided, from Wichita to the Oklahoma border along a route to be determined.

## ARTICLE II - DEFINITIONS

**Access Point** - Points along Contractor-provided fiber optic infrastructure route to be used by KDOT for connection of ITS field components or other services and systems, either now or in the future.

**Backbone Network** - Transmission data paths designed to connect lower speed channels or clusters of dispersed devices into a higher speed system.

**Bid** - The offer of the Contractor, in the prescribed form, to perform the work and furnish the services, labor, equipment, infrastructure and materials at the levels required.

**bps** - Bits per second.

**Building (or facility)**- Any structure needed to house and support any element of the Fiber Optic Infrastructure System and Passive Network.

**Channel** - A communications path. See data path.

**Collapsed-ring Topology** - A topology in which the data path follows a ring, but does not have a geographic separation of paths.

**Collapsed-staggered-ring Topology** - Ring topology for a network where every other node is connected in the outbound direction and the skipped nodes are connected in the return direction. Similar to a collapsed-ring in that there is no geographic separation of the paths.

**Completion** - The Secretary's acceptance of all installation work to be performed under this contract for both the Fiber Optic Infrastructure System and the Passive Network, including testing and training.

**Contract** - The written agreement between the Secretary and the Contractor setting forth the obligations of the parties on the project, including, but not limited to, the performance of the work and the furnishing of labor and materials. The contract includes the invitation for bids, proposal form, proposal, contract bond, specifications, special provisions, standards, plans, notice to contractors, notice to proceed, Highway Use Permit and any change orders, agreements, addenda, and appendices that are required to complete the construction of the work in an acceptable manner. All of the documents listed constitute the contract and one instrument.

**Data Path** - A path of communications, either electrical, electromagnetic or optical, between two or more points.

**Data Rate** - The measurement of how quickly data is transmitted. Expressed in bps.

**DS0** - Digital service, level zero, 64,000 bps.

**DS1** - Digital service, level one, 1.544 Mbps or 24 DS0 channels.

**DS3** - Digital service, level three. Equivalent to 28 DS1 channels or 44.736 Mbps.

**Dual Paths**- Two distinct data paths are available for the transmission of any signal.

**Fiber Optic Infrastructure System** - The infrastructure of the supporting equipment, optical fiber, conduit, pull boxes, handholes and other items necessary to interconnect and create a functioning ITS network that provides a system of organized assembly of equipment, personnel, procedures and other facilities designed to perform a specific function.

**Field Components/Equipment** - Individual pieces of electrical or electronic ITS equipment located along KDOT right-of-way.

**HUP (Highway Use Permit)** - Collectively the following permits and associated policies: The Highway Permit Agreement Use of Right of Way, D.O.T. Form No. 304; the Highway Permit Agreement Attachments to Bridges and Other Structures, D.O.T. Form No. 310; KDOT Utility Accommodation Policy 1994; Highway Permit for Highway Access, D.O.T. Form No. 309; Kansas Department of Transportation Corridor Management Policy 1997; and any subsequent revisions and editions to the permits and policies described.

**Infrastructure** - The supporting equipment, optical fiber, conduit, pull boxes, handholes and other items necessary to interconnect and create a functioning ITS network.

**ITS** - Intelligent Transportation Systems. Control, monitoring and information equipment working together through a central operations center to provide a safe, smooth-flowing highway network.

**Kbps** - Kilobits per second.

**KDOT** - Kansas Department of Transportation

**LOS** - Level of service. The channel capacity available at any point on the network. The overall channel capacity for a particular area of the network.

**Mbps** - Megabits per second.

**Modulator/demodulator** - A device which varies some characteristic of the electrical wave that carries a transmitted signal. Frequency modulators can combine multiple signals into one wide-band signal for transmission on a single carrier.

**Network** - The fiber optic infrastructure and equipment that ties discrete ITS field components together, ties ITS field components to termination points and ties termination points together.

**Node** - Access points requiring two data paths, or dual paths, back to a termination point.

**OC-1** - Optical carrier level one. Equipment and optical fiber infrastructure with transmission capacity of approximately 52 Mbps or 1 DS3 (28 DS1s). See SONET.

**OC-3** - Optical carrier level one. Transmission capacity of approximately 155 Mbps or 3 DS3s. See SONET.

**OC-12** - Optical carrier level twelve. Transmission capacity of approximately 622 Mbps or 12 DS3s. See SONET.

**Parties**-The Secretary of Transportation and the contractor.

**Passive Network** - A system of empty conduit and handholes for KDOT's use that are installed in conjunction with the Fiber Optic Infrastructure System, including pull ropes, duct caps, warning tape, labor and other items required to build the network according to KDOT's requirements.

**Person**- Any natural person, association, corporation or partnership.

**Project** - The specific section of the highway right-of-way together with all appurtenances and construction to be performed thereon related to the installation of fiber optics under the contract. The project has been assigned Project No. 106 K-7319-01.

**Proposal Form** -The document setting forth the obligations of the parties on the project for which bids are to be supplied and submitted. Upon acceptance of a successful Contractor's bid, the proposal form (including any documents incorporated into that form, addenda, and appendices) and obligations listed therein become a part of the contract.

**Ring Topology** - A backbone network that is in the shape of a closed loop or ring.

**Secretary-** The Secretary of Transportation of the State of Kansas, or his designee, for the State of Kansas Department of Transportation, KDOT. The Secretary is empowered with powers and duties to issue this Proposal Form and enter into a contract with the contractor pursuant to K.S.A. 68-404 et. Seq.

**Service** - Any act necessary to maintain a continuously operating fiber optic infrastructure and to repair the Passive Network for 30 years in the State of Kansas.

**SONET** - Synchronous Optical NETWORK. A family of fiber-optic transmission rates created to provide the flexibility needed to transport many digital signals with different capacities. SONET is an optical interface standard that allows the interworking of transmission products from multiple vendors. It defines a physical interface, optical line rates known as Optical Carrier (OC) signals, frame format and protocol.

**Standard Specifications** - The 1990 edition (English and metric) of the KDOT Standard Specifications for State Road and Bridge Construction and subsequent revisions and editions.

**System** - An organized assembly of equipment, personnel, procedures and other facilities designed to perform a specific function.

**T1** - A data path with a capacity of 1.544 Mbps (DS1).

**Termination Point** - Primary destination for data from ITS and traffic field components; for example, a traffic operations center or the Docking State Office Building and other areas as required.

### **ARTICLE III - GENERAL PROVISIONS:**

#### **Contract Scope.**

- a. The Contractor shall install a Fiber Optic Infrastructure System that supports ITS implementation and operation in the State of Kansas.
- b. The Contractor shall install a Passive Network for KDOT. Upon KDOT's acceptance of the Project, the Passive Network becomes KDOT's sole property. The Contractor shall provide to KDOT a location map of the Passive Network along with a written letter stating the transfer of the Passive Network ownership to KDOT within 30 days of KDOT's acceptance of the Project.
- c. The Contractor shall provide to KDOT services for 30 years as outlined in Article IV, Section 9. Service Requirements and Section 11. Service Level Agreement.

**Highway Use Permit Required.** As a condition subsequent to the contract, the parties must agree on the terms and conditions of the Highway Use Permit (HUP). The HUP must specify the location(s) on the right of way of all

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

required facilities, any limitations or conditions regarding the term or placement of facilities, and any matter regarding or relating to reinstallation or removal of facilities from the right of way. The term facilities as used in this section for Highway Use Permit shall include the fiber optics for this Project, the infrastructure, the network, and the passive network, subject to Article III, Section 1.b, and Article IV, Section 9.m.

All terms and conditions of the HUP may be subject to negotiation following a required field check. KDOT has the option to have location established by survey. If a survey is required, it will be done at KDOT's expense.

3. Interface with KDOT. The Contractor, including the project manager, deputy project manager, and other key personnel and subcontractors, shall be responsible for maintaining a regular and complete dialogue with KDOT's project manager or project management team, including regular updates and briefings on Project status. Meetings shall be held at KDOT's Project Management office in the Docking State Office Building in Topeka, Kansas unless otherwise directed or approved by KDOT's project manager or his/her deputy or authorized representative.

Briefings shall include status of work, including engineering, permits, construction, testing and proofing and activation of facilities and system. This shall include schedule and progress updates, identification of delays, deficiencies and remedies and action taken to correct same, all in writing and/or electronic format.

All questions related to the construction of the Project shall be directed to the KDOT's Project Management office in the Docking State Office Building in Topeka, Kansas.

4. The Standard Specifications. The Standard Specifications shall apply only as specifically indicated in the contract documents.
5. Rejection of proposals. As stated previously, proposals will be rejected for failure to offer the minimum technical bid requirements. Proposals may also be rejected according to Standard Specifications 102.16.
6. Award and Execution of Contract. The award and execution of the contract will be made according to Standard Specifications 103.02, 103.03, 103.06, and 103.07.

**ARTICLE IV - CONTRACTOR'S RESPONSIBILITIES:**

1. General Responsibilities. The Contractor shall supply its own equipment, materials, supplies, administrative support, property, and all other items necessary to perform its obligations under the contract.
  
2. Costs. The Contractor will pay 100 percent of the construction, operation and maintenance costs of the Fiber Optic Infrastructure System. The Contractor will provide KDOT the Passive Network and service as stated in Article IV.9 Service Requirements and the Article IV.11 Service Level Agreement for thirty years. It is not KDOT's intention to pay for this network and services; nevertheless, the Contractor may charge for this network and services. Please designate in the space provided on the front of the Proposal Form the cost the Contractor is bidding for the Passive Network and service. If bidding no costs, please insert \$0.00.
  
3. Construction Permits. As required by the Standard Specifications, Section 107.02, the Contractor shall procure all permits and licenses necessary to accomplish the Project. Section 107.02 applies to work involving construction of new or modification of existing structures. To obtain permission to work on KDOT's right-of-way, the Contractor shall apply for a HUP. The Contractor shall apply for a Highway Use Permit. The Contractor agrees and acknowledges that the HUP governs the terms of the Contractor's fiber optic infrastructure being on KDOT's right-of-way. If the permit is not approved, the Agreement is null and void. Upon receiving the HUP, the Contractor shall complete all the installation of the Fiber Optic Infrastructure System along with the Passive Network, and administer this Project to ensure Project completion consistent with the Contract Documents. Except for the service, the Project will be considered complete after the Contractor completes all required construction and installation tasks and the Secretary accepts the Project.

The Contractor shall apply for all other permits (including but not limited to electrical, structural, mechanical, fire suppression, civil work, and site preparation) with the entity authorized to grant the permit. The Contractor also shall take any action and pay any fees, charges, and taxes necessary to obtain and sustain the permits. Finally, the Contractor's operations are subject to any review and inspections necessary to obtain and sustain the permits.

4. Insurance Requirements. The Contractor shall provide the insurance required by the Standard Specifications, Section 107.14 rather than the insurance required by the HUP.

5. Bid Bond. The Contractor shall provide a bid bond in the sum of \$10,000.00. The Bid Bond shall be submitted in the form attached. Failure to provide the Bid Bond in the form specified herein shall be grounds for determining that the Contractor's bid is non-responsive and ineligible for award of contract. Refer to Section 102.12 of the Standard Specifications for terms concerning forfeiture of the bid bond.
  
6. Contract Bond. The Contractor shall provide a contract bond with the application for the HUP. The penal sum of the contract bond will be the value of the passive network. The contractor will determine the value of the passive network and retain documentation supporting this determination. The contract bond shall be executed on D.O.T. Form 283 with a surety authorized to do business in Kansas by the Kansas Commissioner of Insurance and approved by the Secretary. The contract bond shall be conditioned upon the faithful performance of the contract requirements for the Passive Network and the payment of all indebtedness incurred for all labor, materials, and supplies furnished for the Passive Network. The contract bond must be kept in full force for the period required by law. For purposes of K.S.A. Section 68-410, the completion date of the contract has the same meaning as the term "completion" in Article I of this contract. In the event the surety or bonding company fails or becomes financially insolvent, the contractor shall file a new and sufficient bond meeting the requirements of this section. Refer to section 103.05 of the Standard Specifications.
  
7. Construction and Installation Requirements. Construction of the Fiber Optic Infrastructure System and Passive Network within KDOT's right-of-way shall be in accordance with the KDOT Utility Accommodations Policy and the standards set forth in Section 8. KDOT's Utility Accommodation Policy defines the general policy and requirements for the installation of the fiber optic infrastructure and Passive Network. Exceptions and some specific requirements are as stated herein.
  - a. The Contractor shall be allowed to install fiber optic cables, conduit, and construct a trench along the right-of-way and parallel to the centerline, as well as to install crossings of the right-of-way in the manner allowed and approved by KDOT. Trenching shall not generally be allowed in the median. The Contractor shall make arrangements to provide or have installed electrical power and connection to communication services or providers off the KDOT right-of-way. Points of access to the right-of-way shall be at established locations, including interchanges, on and off ramps, rest or service areas, or other locations approved by KDOT in writing.

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

- b. Attachment to bridges and other structures shall comply with the Highway Permit Agreement Attachments to Bridges and Other Structures, D.O.T. Form No. 310.
- c. The passive network required by KDOT shall consist of two 1-1/4 inch (minimum) PVC or HDPE ducts with pull ropes and duct plugs installed. Conduit or innerduct shall be installed in trench or using a chute plow to a minimum depth of 36", and the KDOT conduit/duct may be installed in the same trench or plow line as the conduit or duct installed by The Contractor-for the fiber optic system. Handholes shall be fiberglass or concrete, at least two feet wide by three feet long by two feet deep, bedded in at least six inches of gravel to allow for water to drain off. Handholes shall generally be flush with the ground, but may extend up to one (1) inch above grade. Handholes shall be rated for AASHTO H-20 loading, both the body, lid and installation, and shall have the words "KDOT COMM" permanently inscribed on the lid.
- d. The Contractor shall not construct structures such as buildings within the right-of-way unless specifically allowed by KDOT through an approved HUP. The Contractor shall acquire through purchase or lease real property to meet these ends. In the event the Contractor leases property that will house or support equipment critical to the operation of services provided to KDOT under this Project, the leases shall be of sufficient life span to ensure continuous operation of KDOT's services for the life of this contract. Any facility housing or supporting equipment critical to the operation of services provided to KDOT under this Project shall be secured to prevent unauthorized access.

Barring warning markers, any installation that is above grade (extending more than one (1) inch above the surface), including, but not limited to, cabinets, buildings, utility poles, and other items proposed by The Contractor-shall be reviewed and approved by KDOT prior to installation.

- e. The Contractor shall install a 4 inch wide (minimum) colored plastic warning tape at least 12 inches above ducts or direct buried fiber installed under this Project. The tape shall be marked with the words "CAUTION - FIBER OPTIC CABLE". The Contractor shall install colored markers along the cable or conduit path, no further than 2 feet off the centerline of the path, on 1000 foot centers; however, in instances where visibility is limited due to brush, curves, rising or falling terrain or other factors, the markers shall be installed at closer intervals. These markers may be located at an offset to the ducts or direct buried fiber at the ROW line at the direction of the KDOT. At minimum, the two adjacent markers shall be visible from any given marker. Markers shall be 3 feet tall, flexible and frangible, with information defining the installation it marks.

f. The fiber optic and passive network trench or plow line, where parallel to the right-of-way centerline, shall be located in accordance with the KDOT Utility Accommodation Policy with adjustments to accommodate existing structures and utilities. The Contractor shall be required to identify and locate structures and utilities, and bring any and all conflicts to the attention of KDOT, along with proposed adjustments for trench route centerline. KDOT will review the proposed routes and advise the Contractor on any required changes. The Passive Network shall be installed in the same trench or plow line as the conduit or innerduct installed by the Contractor for the Fiber Optic Infrastructure System.

8. Technical Standards and Code Requirements. The following codes and standards apply to all construction, engineering, design, installation and service efforts undertaken as a result of the award of this project. The successful Contractor shall comply with the applicable codes, laws, and regulations of all federal, state, and local agencies having jurisdiction. Wherever applicable, electrical terminology, design, materials, equipment specifications, construction and testing methods shall conform to the latest applicable standards and requirements of the most current adopted versions of the following documents:
1. Contract Requirements, including KDOT construction standards and standard specifications
    - KDOT Standard Specifications for State Road and Bridge Construction (Metric Version), 1990 Edition;
    - KDOT Standard Requirements for Traffic Control (Metric Version);
    - KDOT Utility Accommodation Policy, 1994 Edition;
  2. UL 1459 (General Telephone Equipment and Product Safety Requirement)
  3. Bell System Technical References:
    - TR-TSY-000009 (Asynchronous Digital Multiplexers, Requirements and Objectives)
    - TA-TSY-000038 (Digital Fiber Optic Systems, Requirements and Objectives)
    - TR-NWT-000063 (NEBS Generic Equipment Requirements)
    - TR-TSY-000253 (SONET Transport Systems: Common Generic Criteria)
    - TA-TSY-000418 (Generic Reliability Assurance Requirements for Fiber Optic Transport Systems)
    - TR-TSY-000496 (SONET Add-Drop Multiplexer Equipment Generic Requirements)
    - TR-TSY-000499 (Transport System Generic Requirements)
    - T1.403-1989 (Carrier to Customer Installation DS1 Metallic Interface)

4. AT&T Technical Advisory #34 Interconnection Specification for Digital Cross Connects.
  5. National Electrical Code (NFPA 70)
  6. American National Standards Institute:
    - ANSI/TIA/EIA 568-A (Commercial Building Telecommunications Cabling Standards)
    - ANSI/EIA/TIA 569 (Commercial Building Standard for Telecommunications Pathways and Spaces)
9. Service Requirements. Service for the Fiber Optic Infrastructure System and Passive Network within KDOT's Right-of-Way shall be in accordance with the Standards identified in Section 8. Exceptions or specific requirements are as stated herein.
- a. The Contractor shall provide a SONET-based transport system using singlemode fiber optic cable as the interconnecting media between active electronic devices in the Contractor's system. SONET equipment shall meet all current communication industry standards for SONET systems; The Contractor shall provide shop drawings and equipment descriptions of the SONET equipment to KDOT to allow KDOT to coordinate ITS equipment with the transport system; The Contractor will verify in writing that the equipment meets standards and specifications.
  - b. Upon KDOT's receipt of written notice from the Contractor that the Fiber Optic Infrastructure System is ready for testing and acceptance, KDOT shall perform, at its cost, such testing of the portions of the Fiber Optic Infrastructure System used by KDOT hereunder as it may reasonably deem necessary, with the assistance and cooperation of The Contractor. This shall include verification of the correct operations of information transmittal and receipt at ITS locations, and confirmation of the proper operation of the bi-directional transmission capability of the network. KDOT shall begin testing after notification is received from The Contractor of the system being ready, and in conjunction with the ITS installation and activation plan.  
  
KDOT shall have the right to delay testing of the ITS channels interconnection; however, such a delay shall not prevent the Contractor from activating the network for the Contractor's customer use, nor shall it be taken as a waiver of KDOT's right to test the system for proper operation for ITS equipment. Within 15 calendar days of the completion of KDOT testing, KDOT shall notify The Contractor of acceptance of the system OR of any deficiencies in the system.
  - c. KDOT shall be provided bandwidth capacity up to an aggregate OC-12 level with growth to OC-24 at Nodes along the Fiber Optic Infrastructure

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

System, as per the bandwidth level in Table 1, Article IV, Section 9.g. When requested by KDOT to meet it's ITS needs, the Contractor will initiate service through the Fiber Optic Infrastructure System at Nodes. Adjoining Service Points and Nodes for which KDOT has requested service shall be physically interconnected with the Passive Network. At all Nodes, the Fiber Optic Infrastructure System shall have the capability of providing electronic interconnection points through which KDOT can interconnect its fiber optic cable running through the Passive Network.

- d. The ITS design is expected to be implemented over a multi-year schedule. KDOT shall work with the Contractor to identify likely future highway construction to avoid the need to relocate the Passive Network or Fiber Optic Infrastructure System due to such construction.
- e. The locations for Nodes and Service Points as specified in the project requirements are general in nature and will be determined during a pre-construction conference between the contractor and KDOT. The anticipated level of service requirements for each Node location is detailed in the project requirements. This level of bandwidth at the Nodes on the Fiber Optic Infrastructure System must be available to KDOT when service is requested from time-to-time to meet KDOT ITS needs, provided, however, that the aggregate bandwidth on the Fiber Optic Infrastructure System used by KDOT shall not exceed an OC-12 level initially, or OC-24 within the terms allowed for growth of service.
- f. The Contractor will propose a method by which equipment and/or fiber can be modified and/or added to support future ITS equipment with Service Points near these Nodes, provided, however, that KDOT shall pay to The Contractor the cost of all such modifications or extensions.
- g. KDOT shall have the right to insert data and signals into the Fiber Optic Infrastructure System at Nodes for which service has been requested, provided, however, that the aggregate bandwidth on the Fiber Optic Infrastructure System used by KDOT shall not exceed an OC-12 level initially, or OC-24 within the terms allowed for growth of service. KDOT shall have the right to request increases in the overall bandwidth up to OC-24, in DS-3 increments at the rate as defined in Table 1. If KDOT requires additional bandwidth capacity beyond an OC-24 level or in excess of the growth allowed for by this agreement, the Contractor shall be allowed to charge KDOT a reasonable fee for such services, not exceeding the prices for service extended to other clients of the Contractor using the same system.

If KDOT requests additional bandwidth ahead of the scheduled growth, but within the OC-24 bandwidth, and the Contractor provides this for a

fee from KDOT, the fees shall apply only until such time as the additional bandwidth would be available for KDOT's use. At that time, the fees shall cease. Growth shall be available to KDOT as shown in the following schedule:

**Table 1**

Bandwidth Level from Kansas City to Colorado	Bandwidth Level from Salina to Oklahoma Border	Available Date (Years after Acceptance)
OC-18	OC-18	5
OC-24	OC-24	10

KDOT may choose to delay growth at its sole discretion, provided it gives The Contractor 12 months notice of a planned delay. Any delay in growth shall not affect the scheduled availability of following growth.

- h. The initial levels of service for each construction phase are shown below, with additional growth as defined herein.

**Levels of Service by Project Route**

Project Route	Level of Service
Kansas City to Colorado Border	OC-12
I-70 to Oklahoma Border	OC-12

- i. **Project Schedule.** Services shall start (construction complete) on or before July 1, 2000.
- j. The Contractor will provide KDOT with access to and the use of the channels and bandwidth of a SONET-communication transport system. KDOT shall have the right to determine and select the means, manner and methods by which information is input to and extracted from the system, including but not limited to channel banks, DS-1 or higher rate channels up to a DS-3 or multiples of DS-3 channels at any given node, ATM or other. KDOT will provide the Contractor with direction as to channel provisioning on a node-by-node basis on or before September 1, 1999.

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

- k. KDOT shall have the right to connect to the Nodes using copper wire (twisted pair, coaxial, etc.) radio, or low speed optical fiber. The Contractor shall connect these Nodes to the Fiber Optic Infrastructure System. Nodes shall be equipped to provide service at a minimum interface level of DS-1. This interface can be provided either directly to the SONET equipment or indirectly through channel banks or multiplexers.
- l. Electronic Interface Between Contractor and KDOT. At each Node, the Contractor shall provide a handhole, vault or above ground cabinet at the property or Right-of-Way line for cable splicing or equipment. KDOT will extend copper (twisted pair, coaxial, etc.) or fiber optic cables from field components or facilities to these Nodes. The Contractor shall be responsible for connecting KDOT's cable to the Fiber Optic Infrastructure System including end connectors.
- m. The Contractor shall construct a Passive Network for use by KDOT for ITS and related services among KDOT facilities and installations or other applications and uses as deemed necessary by KDOT and the State of Kansas. The Passive Network will consist of two 1-1/4 inch minimum PVC or HDPE schedule 40 ducts, including pull ropes, duct caps, warning tape, labor and other items required to build the network in accordance with KDOT's requirements along the routes set forth above. The Passive Network shall be labeled "KDOT" and color-coded different from the Contractor's system to indicate ownership.
- n. KDOT makes no representation or warranties concerning subsurface conditions, latent physical conditions, or other geological conditions to be encountered by the Contractor on KDOT's Right-of-Way. Any relief for such site conditions allowed under Standard Specifications Section 104.03 or implied in any other contract provision shall not apply to this Project.
- o. Plans for installation and construction, including equipment and material specifications and shop drawings shall be made available to KDOT for review and approval by KDOT or a third party at KDOT's sole discretion. KDOT shall review The Contractor's plans and specifications for the construction and installation of the Passive Network and those portions of the Fiber Optic Infrastructure System Fiber Optic Infrastructure System to be used by KDOT hereunder, and shall, within thirty (30) days after receiving such plans and specifications, notify the Contractor in writing of any objections thereto, specifying the grounds for such objections in reasonable detail. Failure by KDOT to so notify the Contractor of any such objections within such period of 30 days shall be deemed to be approval by KDOT of such plans and specifications.

10. Environmental Permits. The Contractor shall ascertain the need for any and all air, water and other environmental pollution permits regarding the work involved in this Project and shall obtain and pay for all required permits.
11. Service Level Agreement. The Contractor shall guarantee the level and quality of service provided for the Fiber Optic Infrastructure System and the Passive Network.

Guarantees on service shall commence as each portion of the Fiber Optic Infrastructure System and Passive Network are activated and accepted by KDOT and shall be for a period lasting until the end of the contract. These guarantees shall include all maintenance and repair necessary to maintain a fully operational system. Repairs of the operational system shall include all parts, labor, equipment and related items. Service repairs shall commence on site within four hours of notification by KDOT of a failure, and shall be solely at the Contractor's expense. In the event that the system failure cannot be repaired within four hours of corrective action commencing, the failed equipment will be replaced immediately, but no later than twenty-four (24) hours after notification of a failure.

The Contractor shall notify KDOT of any and all outages or failures in the system, including cable and equipment, detected by The Contractor within one hour of the event being detected by the Contractor, and shall identify all steps being undertaken by the Contractor to correct the situation. The Contractor shall coordinate with KDOT for any corrective measures that require the operation of vehicles and personnel employed by the Contractor its sub-contractors within KDOT's right-of-way.

12. Training. The Contractor shall conduct an orientation class for up to ten KDOT representatives on the connection, operation and maintenance procedures used by the Contractor. This class shall be repeated at 5-year intervals throughout the life of the contract. These classes shall cover the knowledge needed by KDOT to properly interface with the installed electronic equipment and infrastructure.
13. Documentation. The Contractor shall document important aspects of the Fiber Optic Infrastructure System. This documentation shall describe the system operations including, but not limited to, network diagrams, technical descriptions of physical equipment installed, and protocols transported by the system, and list troubleshooting steps or remedies that KDOT can monitor or correct. The documentation shall also identify the information needed by The Contractor for the changes, addition and removal of service.
14. Qualifications. In satisfaction of the qualifications requirements of Standard Specifications Section 102, a contractor shall be qualified to bid on this

project if the contractor has previously completed the installation of fiber optic infrastructure systems similar to the type specified in this proposal form.

#### ARTICLE IV - KDOT RESPONSIBILITIES

1. Inspection. All work performed within the KDOT right-of-way or within KDOT facilities, and all materials furnished for the Project shall be subject to inspection by KDOT's designated inspectors.

KDOT's inspectors shall have the authority to 1) reject unacceptable work; 2) reject defective material; and 3) suspend the work, in whole or in part, due to the Contractor's failure to correct conditions unsafe to workers, or the general public, carry out provisions of the contract, or carry out orders. The Contractor will not be entitled to contract adjustment under the Standard Specifications, Section 108.06 (Temporary Suspension of Work) for temporary suspensions caused by the conditions listed above.

KDOT's inspectors shall also have the authority to suspend the work, in whole or in part, if they identify a hazardous or unsafe condition, issue an immediate stop-work order. If this should occur, the Contractor and/or its subcontractors shall cease all work until such time as the condition is corrected. If Standard Specification Section 108.06 is met, the Contractor may be entitled to a contract adjustment for temporary suspensions caused by hazardous or unsafe conditions.

This section increases the inspectors' authority beyond that provided in the Standard Specifications.

2. Documentation Access. KDOT will provide the Contractor access to necessary plans, documents, reports, programs, diagrams and any other documentation required for the successful completion of this Project. Such documentation is solely for the use of this contract.

3. Right-of-Way. KDOT is only obligated to provide access to right-of-way according to the Utility Accommodation Policy and the Corridor Management Policy.

**ARTICLE V - ADDITIONAL CLAUSES**

1. **Document Priority.** The Contract Documents are complimentary. If there is a conflict or discrepancy among the documents contained in the contract, such conflict or discrepancy shall be resolved by giving precedence to (1) the Highway Use Permit followed by (2) this Proposal Form.
2. **Compliance with Laws.** The Contractor hereby agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances; and all provisions required thereby to be included herein, are hereby incorporated by reference.
3. **Equal Employment Opportunities.** The Contractor shall comply with the provisions of federal, state and local regulations to ensure that no employee or applicant for employment is discriminated against because of race, religion, sex, national origin, age or handicap. The Contractor is directed to the Specific Equal Employment Opportunity Contractual Requirements, which is attached in Special Attachment No. 1. The Contractor shall review this policy and act accordingly within its requirements.
4. **Warranty Against Contingent Fees.** The Contractor shall identify all companies or persons retained (other than a bona fide employee working solely for the Contractor) to solicit or secure this contract, and warrants that it has not paid or agreed to pay any person or entity (other than a bona fide employee working solely for the Contractor) any fee, commission, percentage, brokerage fee, gift, or other consideration on a basis that is contingent upon the award of this contract. For breach or violation of this warranty, the Secretary shall have the right to annul the contract without liability or in its discretion, to deduct from the contract price the full amount of such commission, percentage, brokerage, or contingent fee.
5. **Assignment, Transfer, Conveyance, Subcontracting, and Disposal.** The Contractor shall not assign, transfer, convey, encumber, or dispose of this contract, or its rights or duties, title, interest or power to execute such assignments to any other person, company, corporation, or entity without the prior written consent of the Secretary. In no event shall the Contractor be permitted to assign, transfer, convey, encumber, or dispose of only a portion of the Fiber Optic Infrastructure System. The contract shall immediately terminate (no right to cure) in the event of its assignment, conveyance, encumbrance, or other transfer by the Contractor without the prior written consent of the Secretary. If KDOT approves a successor or the assignment of duties, the Contractor's HUP becomes null and void and the successor shall apply for a HUP in accordance with the UAP. Nothing in this section prevents the contractor from using its fiber optic infrastructure

system as collateral security. Any such encumbrance will be subject to all of KDOT's rights and interests in the system.

6. Disputes. Should any disputes arise with respect to this contract, The Contractor and KDOT agree to act immediately to resolve such dispute. The Contractor agrees that in the event of a dispute it will continue, without delay, to carry out all of its responsibilities under the contract for all non-disputed work. Any additional costs incurred by the Contractor as a result of such failure to proceed shall be borne by the Contractor and the Contractor shall make no claim against KDOT for such costs.
7. Waiver. In the event of a breach of the contract, or any provision thereof, the failure of the Secretary to exercise any of his rights or remedies under this contract shall not be construed as a waiver. The remedies herein reserved shall be cumulative and additional to any other remedies at law or in equity.
8. Project Management. KDOT will provide overall Project direction. Assignment of project management, coordination and supervision of the Contractor's staff assigned will be the Contractor's responsibility.
9. Differing Site Conditions. KDOT makes no representations or warranties concerning subsurface conditions, latent physical conditions, or other geological conditions to be encountered by the Contractor-on KDOT's right-of-way. Any relief for such site conditions allowed under Standard Specifications Section 104.03 or implied in any other contract provision shall not apply to this Project
10. Plans/Drawing Review and Approval. Plans for installation and construction, including equipment and material specifications and shop drawings shall be made available to KDOT for review and approval by KDOT or a third party at KDOT's sole discretion, before construction begins, with adequate lead time to allow KDOT to review and comment. KDOT shall have the right to reject any item, method or means of construction if it fails, in KDOT's sole judgment, to meet KDOT's standards or to properly ensure the safety of the general public.
11. Service Location. All services will take place on the routes specified in the Proposal Form.
12. Durability. This contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13. Force Majeure. The Contractor shall not be liable if the failure to perform this contract arises out of causes beyond the control of or negligence of The Contractor and any of its subcontractors and suppliers. Causes may include, but are not limited to, acts of nature, fires, quarantine, abnormally severe weather, strikes other than by The Contractor's employees, subcontractors employees, and suppliers employees, and freight embargoes.
  
14. Contract Length and Termination. The contract length and term for service shall be consistent with the terms of the Highway Use Permit which will be more or less than 30 years after the Statewide Fiber Optic Infrastructure System is fully operational and accepted for same by KDOT.
  
15. Bankruptcy. If The Contractor is declared bankrupt or becomes insolvent, or upon the appointment of a receiver, trustee or assignee for the benefit of its creditors, KDOT reserves the right and sole discretion to cancel this contract at its option and without further cost or to refund the contract and hold the Contractor liable for all resulting damages. If this contract is canceled by KDOT, the terms of this contract pertaining to termination of the contract shall remain in full force and shall apply immediately at the time of bankruptcy.
  
16. Termination. When this contract is terminated, for reasons other than breach of contract, KDOT shall have the option to:
  - a. Require The Contractor to remove all Fiber Optic Infrastructure System and related appurtenances from KDOT's property at the Contractor's own cost and repair all damages to KDOT's property which results. The Contractor shall have one hundred and eighty (180) days from the termination of the contract to complete that work. The Contractor shall not block or materially delay, impede or interrupt traffic to effect the removal of its property and shall not take any action which creates a dangerous condition of public property or which would endanger any pedestrian or occupant of a motor vehicle. If KDOT elects this option, the Contractor must remove all hazardous or regulated wastes it generates or is responsible for (directly or indirectly) from the KDOT property and must restore the KDOT property to at least the condition it was in before it was awarded this contract, in accord with all federal, state and local environmental laws, regulations and ordinances.
  
  - b. Allow the Contractor to abandon any or all portions of the Fiber Optic Infrastructure System on KDOT's property, in which instance that portion of the Fiber Optic Infrastructure System becomes the sole and exclusive property of KDOT; except, however, the Contractor may

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

not abandon any items or equipment which may contain or create hazardous or regulated wastes or materials without prior notice to KDOT of the description and location of those materials. KDOT may refuse to accept the abandonment of all or any portion of the Fiber Optic Infrastructure System tendered by the Contractor until any hazardous or regulated wastes or materials have been removed in accordance with all applicable laws. In any event, the Contractor remains liable for the remediation and full restoration of any damage or injured real or personal property and for injuries or death resulting from the presence of any hazardous or regulated wastes or materials on or adjacent to KDOT's property, which wastes or materials are or were, owned or placed or operated by the Contractor.

c. Buy the Fiber Optic Infrastructure System and the Contractor's owned equipment and fixtures pertinent to the system on the KDOT property, or any portion thereof which is acceptable to KDOT, at a price to be mutually agreed upon.

d. Allow the Contractor to sell the Fiber Optic Infrastructure System to a successor provider of fiber optic cable services which agrees to provide the services required hereunder and which is acceptable to KDOT.

Regardless of the options stated above, in the event of termination of the contract due to breach of contract, bankruptcy, or mutual agreement, KDOT shall have the right to continue to use the Fiber Optic Infrastructure System to support the ITS networks for a period of two years, or until an alternate means of supplying the service is found, whichever comes first.

17. Notices. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either party to the other shall be in writing and shall be made by personal delivery or sent by United States certified mail, postage prepaid, return receipt requested or by overnight delivery, prepaid, addressed as follows:

**Matt Volz  
Kansas Department of Transportation  
Transportation Planning  
915 SW Harrison  
Docking State Office Building – 8<sup>th</sup> Floor  
Topeka, Kansas 66612-1568  
Tel: 785-296-6356  
Tel: 785-296-8168**

**and to the Contractor's Representative**

or to any other persons or addresses as may be designated by notice from one party to the other.

18. Independent Contractor. Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not for any purpose be construed to be the employees or agents of the other party.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees who are engaged in work authorized by this contract.

19. Conflict of Interest. The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employment of the State and who are providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least one-year after his/her termination of employment with the State.

20. Hold Harmless. The Contractor shall indemnify the State against any and all claims for injury to or death of any persons; for loss or damage to any property; incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to State property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

The Contractor hereby expressly agrees to save the Secretary and the Secretary's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgements and damages to persons or property caused by the Contractor, its agents, employees or subcontractors which may result from acts, errors, mistakes or omissions from the Contractor's operation in connection with the services to be performed hereunder.

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

21. Care of State Property. The Contractor shall be responsible for the proper care and custody of any state-owned personal tangible property and real property furnished for the Contractor's use in connection with the performance of this contract, and the Contractor will reimburse State for such property's loss or damage caused by the Contractor, normal wear and tear excepted.
22. Prohibition of Gratuities. Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
23. Federal, State and Local Taxes. The State makes no representation as to the exemption from liability or any tax imposed by any governmental entity on the Contractor.
24. Modification. The contract shall be modified only by the written agreement of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
25. Third Party Beneficiaries. This contract shall not be construed as providing an enforceable right to any third party.
26. Captions. The captions or headings in the Proposal Form are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
27. Severability. If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected, and each provision of this contract shall be enforced to the fullest extent permitted by law.
28. Governing Law. This agreement shall be governed by the laws of the State of Kansas and shall be deemed executed at Topeka, Shawnee County, Kansas.
29. Breach of Contract; Right to Cure. If a party notifies the other party that a sufficient failure to perform has or will constitute a breach of contract, the other party shall have 60 calendar days to remedy the identified breach to that party's satisfaction. If the breaching party fails to cure within this 60-day period, the non-breaching party will have all equitable and legal rights, defenses, and remedies available under Kansas Law. This right to cure does not apply if the nature of the breach makes a right to cure meaningless.

Kansas Department of Transportation  
Fiber Optic Infrastructure System

30. Jurisdiction. The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas, District Court of Shawnee County. The United States District Court for the State of Kansas sitting in Topeka, Shawnee County, Kansas shall be the venue for any federal action or proceeding arising hereunder, in which the State is a party.
31. Mandatory Provisions. The provisions found in Contractual Provisions Attachments (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof. With its bid, the Contractor shall also complete Special Provision 08-10-66 "Certification-Noncollusion and History of Debarment" and Special Provision 08-04-92-R1 "Certification Contractual Services with a Current Legislator or a Current Legislator's Firm." Both provisions are attached to and incorporated in this Proposal Form.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly authorized officers on the day and year first above written.

October 5, 1998

Date



E. Dean Carlson  
Secretary of Transportation  
for the State of Kansas

Attest:

  
STAFF ATTORNEY

October 2, 1998

Date



Contractor's Representative  
Richard D. Weinstein  
President, Digital Teleport, Inc.

Attest:



Daniel A. Davis  
Vice President-Legal  
Digital Teleport, Inc.

## Article VI - Additional Contract Provisions for Project No. 106 K-7319-01

In addition to the contract items detailed in the project proposal form for KDOT Project No. 106 K-7319-01, the following items and/or services will be provided to the Kansas Department of Transportation by Digital Teleport, Inc. of St. Louis, Missouri:

1. Twenty-five (25) additional handholes at locations to be determined by KDOT. These handholes will have access to the passive network
2. Expansion of fiber optic service from an OC-12 capacity to OC-24 in five years and OC-48 in ten years.
3. Six (6) dark fibers in addition to the six (6) dark fibers specified for a total of twelve (12) dark fibers for the use of KDOT.
4. DS-1 access to the DOT networks of Arkansas, Nebraska, Iowa, Oklahoma, Colorado and access to the Missouri DOT network as per a separate agreement.
5. SONET redundancy for the backbone portion of the fiber optic infrastructure system extending from Kansas City to Salina to the Oklahoma border.
6. Access to the twelve dark fibers at every interchange through the handholes located there. Access shall consist of the fiber optic cable (with 12 strands) being brought into a KDOT handhole adjacent to a DTI handhole at specified locations.
7. Interface points for multiple DS-3's at all locations identified in Article I.
8. The definition of "near" as it relates to the location of access points near state facilities shall mean adjacent to or on that property, unless the parties agree otherwise.
9. These provisions are attached to and incorporated into the Contract for Project No. 106 K-7319-01 and are binding to the same extent as if the provisions had been contained in the proposal form. Because these provisions are being added before the parties execute the contract, no separate signatures are needed on this document.

## 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), which is attached hereto, are hereby incorporated in this contract and made a part hereof".

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 \_\_\_\_\_, 19\_\_\_\_\_.

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.

2. AGREEMENT WITH KANSAS LAW

All contractual agreements shall be subject to, governed by, and construed according to the laws of 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 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 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 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

Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred 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 to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (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 canceled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of the ADA, 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.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

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 shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. REPRESENTATIVE'S AUTHORITY TO CONTRACT

By signing this document, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this document 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 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 shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State 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 vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. INFORMATION

No provisions of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant

# Kansas Department of Transportation

Bureau of Construction and Maintenance  
Topeka, Kansas

MEMO TO: Contract Bidders

FROM: Susan F. Barker, P.E.  
Staff Engineer

DATE: August 13, 1998

SUBJECT: Project Change Notice for Project No. 106 K-7319-01-Statewide Fiber Optics

There is a change in the above referenced contract proposal. It is located on page 11, Article IV-Contractor's Responsibilities, Section 7-Construction and Installation Requirements, Paragraph c. The minimum depth of that the conduit or innerduct shall be installed shall be 42" not 36". Attached is a new page 11 with this correction.

Please promptly sign, date, and **FAX** (785-296-6944) this sheet **REGARDLESS** if bidding. Any instruction not followed will result in your bid being declared irregular. If these changes alter any of your subcontractors or suppliers, it is your responsibility to inform them. Any questions or concerns please contact this office.

Digitel Teleport, Inc.  
(Contractor Name)

Paula R. [Signature]  
(Contractor Agent)

CEB  
(Date)

DMT:SFB:rjd  
Attachment

*Kansas Department of Transportation  
Fiber Optic Infrastructure System*

- b. Attachment to bridges and other structures shall comply with the Highway Permit Agreement Attachments to Bridges and Other Structures, D.O.T. Form No. 310.
- c. The passive network required by KDOT shall consist of two 1-1/4 inch (minimum) PVC or HDPE ducts with pull ropes and duct plugs installed. Conduit or innerduct shall be installed in trench or using a chute plow to a minimum depth of 42", and the KDOT conduit/duct may be installed in the same trench or plow line as the conduit or duct installed by The Contractor-for the fiber optic system. Handholes shall be fiberglass or concrete, at least two feet wide by three feet long by two feet deep, bedded in at least six inches of gravel to allow for water to drain off. Handholes shall generally be flush with the ground, but may extend up to one (1) inch above grade. Handholes shall be rated for AASHTO H-20 loading, both the body, lid and installation, and shall have the words "KDOT COMM" permanently inscribed on the lid.
- d. The Contractor shall not construct structures such as buildings within the right-of-way unless specifically allowed by KDOT through an approved HUP. The Contractor shall acquire through purchase or lease real property to meet these ends. In the event the Contractor leases property that will house or support equipment critical to the operation of services provided to KDOT under this Project, the leases shall be of sufficient life span to ensure continuous operation of KDOT's services for the life of this contract. Any facility housing or supporting equipment critical to the operation of services provided to KDOT under this Project shall be secured to prevent unauthorized access.

Barring warning markers, any installation that is above grade (extending more than one (1) inch above the surface), including, but not limited to, cabinets, buildings, utility poles, and other items proposed by The Contractor-shall be reviewed and approved by KDOT prior to installation.

- e. The Contractor shall install a 4 inch wide (minimum) colored plastic warning tape at least 12 inches above ducts or direct buried fiber installed under this Project. The tape shall be marked with the words "CAUTION - FIBER OPTIC CABLE". The Contractor shall install colored markers along the cable or conduit path, no further than 2 feet off the centerline of the path, on 1000 foot centers; however, in instances where visibility is limited due to brush, curves, rising or falling terrain or other factors, the markers shall be installed at closer intervals. These markers may be located at an offset to the ducts or direct buried fiber at the ROW line at the direction of the KDOT. At minimum, the two adjacent markers shall be visible from any given marker. Markers shall be 3 feet tall, flexible and frangible, with information defining the installation it marks.

REQUIRED CONTRACT PROVISIONS

CERTIFICATION  
CONTRACTUAL SERVICES WITH A CURRENT LEGISLATOR  
OR A CURRENT LEGISLATOR'S FIRM

Kansas Law, K.S.A. 46-239(C), requires this agency to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The following certification must be filled in by the signator of this Contract:

YES, this Contract is with a legislator or a firm in which a legislator is a member. That legislator is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
(city) (state) (zip code)

Business Telephone: \_\_\_\_\_

- OR -

NO, this Contract is not being entered into with a legislator or a firm in which the legislator is a member.

The signer understands that this certification is factual and reliable and is a part of this transaction.

Company: Digital Teleport, Inc.

By: Richard A. ...

Date: 8/25/98

Project No.: 106 K-7319-01

County: \_\_\_\_\_