

PROJECT NO. 23 TE-0347-01
ARRA- T034(701)
TRANSPORTATION ENHANCEMENT PROJECT
PEDESTRIAN/BICYCLE PATH-CLINTON PARKWAY
LAWRENCE, KANSAS

A G R E E M E N T

PARTIES: **DEBRA L. MILLER, Secretary of Transportation,** Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary,"

The City of Lawrence, Kansas, hereinafter referred to as the "City,"

Collectively referred to as the "Parties."

PURPOSE: The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portion of Federal funding for Transportation Enhancement (TE) projects. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments are, under certain circumstances, entitled to receive assistance in the financing of TE projects, provided however, that in order to be eligible for such federal-aid, such work is required by Federal law to be done in accordance with the laws of the state. The Secretary also is authorizing the use of federal recovery funds for this Project under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act). The City understands the United States Congress and Federal Highway Administration (FHWA) have placed conditions on the use of recovery funds. The City agrees to abide by all the conditions stated in this Agreement. The City understands lack of compliance could result in forfeiture or reimbursement of Recovery Act funds.

PROJECT: The Secretary and the City desire to enter into this Agreement and 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 the construction of a TE project, hereinafter referred to as the Project, for the reconstructing an asphalt path to concrete, in Lawrence, Kansas, described as follows:

Removal of an existing six-foot asphalt path and reconstruction of a ten-foot concrete path on the south side of Clinton Parkway from east of Wakarusa Drive to K-10 highway in the City.

EFFECTIVE

DATE: The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the ____ day of _____, 2009.

ARTICLE I

THE SECRETARY AGREES:

1. To provide technical information upon request to help the City acquire rights of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT and as required by FHWA directives such that the City may obtain participation of Federal funds in the cost of the Project.

2. To reimburse the City for one hundred percent (100%) of the total actual costs of construction, which includes the costs of all construction contingency items and construction administration up to a Project cost of \$800,750, but not to exceed a maximum amount of \$800,750. The Secretary shall not be responsible for the total actual costs of construction, which includes the costs of all construction contingency items and construction administration that exceeds \$800,750. Further, the Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project. Finally, the Secretary's reimbursement obligation is contingent upon the City's compliance with Article II, paragraph 2.

3. To make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer and/or licensed architect employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. Billing shall be supported by a progress schedule acceptable to the Secretary, which should include the beginning/ending of the billing period, the percentage of work completed, and the actual costs incurred during the billing period. Accumulated partial payments shall not exceed the total fees earned for each work phase, prior to approval and acceptance of completed work on the all phases by the Secretary.

ARTICLE II

THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. The City shall 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 American Association of Highway and Transportation Officials (AASHTO) design standards, the American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines and KDOT's Design Engineering Requirements, the current version of the City's standard specifications and the rules and regulations of FHWA pertaining thereto. The final design plans for the Project are incorporated by reference and hereby made a part of this Agreement. The City further agrees to follow the Kansas Transportation Enhancement Program Project Administration Guide for the administration of the Project and to follow the Design Engineering Requirements set forth in Attachment No. 1 which is incorporated into this Agreement.

2. Upon completion thereof, the design plans, specifications, estimates, and any necessary surveys, studies or investigations, including, but not limited to, environmental, hydraulic or geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer and/or a licensed professional architect attesting to the conformity of the design with the items in paragraph 1 above. The final design plans must be signed and sealed by a licensed professional engineer and/or licensed professional architect responsible for preparation of the design

plans. Contracts between the City 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 shall contain language requiring conformity with paragraph 1 above. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

- a. Language incorporating into the consultant contract Required Contract Provision 03-10-09-R7 which requires the consultant to complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, but only if the design or other preliminary engineering services are being paid for with Recovery Act funds.
- b. Language incorporating into the consultant contract Required Contract Provision 04-03-09-R3 which permits the United States Comptroller General or the Inspector General and their representatives to audit Project records and interview employees. Even if the design or other preliminary engineering services are not being paid with Recovery Act funds, these consultant records may be audited as documents that pertain to a contract using Recovery Act funds.

3. The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor 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, specifications, estimates, surveys, and any necessary investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

4. Any design exception to the current version of the AASHTO Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the City agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, to defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the design exceptions for this Agreement by the City, the City's employees, or subcontractors.

5. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of federal aid for this Project under the current Federal-Aid Transportation Act, the Recovery Act, or both. The City agrees to take all steps necessary to obtain federal aid for this Project.

- a. To secure Recovery Act funds, the City shall take the following steps:

- Let the project on or before **December 30, 2009**. To let the Project within this time frame, the City shall have completed the right-of-way acquisition, utility relocation arrangements, and preparation of plans, specifications, and estimates for the Project.
- Complete the Recovery Act monthly employment reporting requirement, "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for City employees who charge time to the Project rather than charging time to overhead. The City shall complete the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, electronically on KDOT's website by accessing the Economic Stimulus link at www.ksdot.org or using the link at www.ksdot.org/EconomicRecovery.asp. The City shall submit the completed on-line "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, on or before the 5th calendar day of the month following the month being reported. Example: DOT Form 1589 for the month of June, 2009 shall be completed and submitted on or before July 5, 2009. Further details are provided in Required Contract Provision 03-10-09-R7.
- Obtain a D-U-N-S number (Dun & Bradstreet Number) to include on the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589. Acquire the D-U-N-S number using the following link: http://www.dnb.com/us/duns_update/.
- Include and enforce contract language requiring consultants, subconsultants, contractors, and subcontractors to comply with the monthly employment reporting requirements of Required Contract Provision 03-10-09-R7 (See Article II, paragraphs 4, 16, and 19). On non-KDOT let projects, this provision requires all contractors and consultants who have not undertaken contracts with KDOT to obtain a contractor number by contacting the Director of KDOT's Division of Operations at 785-296-2235. This provision also requires contractors and consultants to have the contract number between KDOT and the entity letting the Project. The contract number is the Agreement No. contained on this Agreement, and the City shall furnish this contract number to the contractors and consultants. A contractor number and contract number are both necessary for the contractors and consultants to access, complete, and submit the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, electronically on KDOT's website.
- Monitor contractors' and consultants' compliance with Required Contract Provision 03-10-09-R7.
- Review monthly the contractor's and consultant's electronic "MONTHLY EMPLOYMENT REPORT," DOT Forms 1589 for compliance with Required Contract Provision 03-10-09-R7. After the contractor or consultant completes and submits its on-line "MONTHLY EMPLOYMENT REPORT," DOT Form 1589 for the Project, the City shall access the MONTHLY EMPLOYMENT REPORT DOT Form 1589 on KDOT's website, review the REPORT, and

document on the space provided that the City completed this review. Conduct the review on or before the 10th calendar day of the month following the month being reported. Example: DOT Form 1589 for the month of June, 2009 shall be completed and submitted by the Contractor on or before July 5, 2009 and reviewed by the City on or before July 10, 2009.

6. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, or subcontractors. The City shall not be required to defend, indemnify and hold the Secretary harmless for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

7. To require the contractor to indemnify, hold harmless, and save the Secretary and the City 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 City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

8. A duly appointed representative, or Chairperson of the City Commission is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement.

9. The Secretary shall not participate in the cost of acquisition or lease of any real property or easements within, across or through any land owned in fee simple or controlled by the City. The City shall provide any real property, easements or land owned in fee simple or controlled by the City at no cost or charge to the Secretary.

10. To warrant at all times during the construction of the Project and for the period of its useful life, the City will coordinate with the Secretary on all matters involving use of highway right of way adjacent to or in the vicinity of the Project, including but not limited to access, traffic control, drainage and utilities, and shall abide by the Secretary's determination of any needs for joint use of right of way, easements or real property for state highway purposes which may arise from or in connection with this Project.

11. Within its respective jurisdictions, it will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be 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. The expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easement shall be borne by the City.

12. It will expeditiously take such steps as necessary to facilitate the early adjustment of any utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting any remaining utilities in order to ensure the contractor shall not be delayed in construction of the Project.

13. It is understood the City shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, as adopted by the Secretary, of the Manual of Uniform Traffic Control Devices (MUTCD).

14. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the standard specifications, a Construction Administration Agreement and administer the payments due the contractor, including the portion of the cost borne by the Secretary. Decisions about what construction costs are federal participating will be made in accordance with the requirements of the Federal Highway Administration and the Secretary.

15. To require the contractor to pay prevailing wages, utilize Disadvantaged Business Enterprises (DBE's), to complete the Recovery Act employment reporting requirements, and to comply with the Recovery Act auditing requirements.

- a. The City will incorporate into the construction contract the Davis-Bacon Certification Verification Agreement and the current general wage decision for the county in which the Project is being constructed. The City will obtain the mandatory Required Contract Provisions from KDOT and incorporate them into the construction contract. The City may obtain the current wage decision from KDOT's Bureau of Construction and Maintenance, Topeka, Kansas.
- b. The City will incorporate into the construction contract the current version of the following Required Contract Provisions for Disadvantage Business Enterprises (DBE's): 7-19-80 "DBE Contract Goals" and 07-18-80 "Federal Aid Contracts Utilization of DBEs". The City will obtain the mandatory Required Contract Provisions from KDOT and incorporate them into the construction contract.
- c. The City will incorporate into the construction contract Required Contract Provision 03-10-09-R7 "American Recovery and Reinvestment Act of 2009, Reporting Requirements for Recovery Act Contracts" which requires the contractor to complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589.
- d. The City will incorporate into the construction contract Required Contract Provision 04-03-09-R3 "American Recovery and Reinvestment Act of 2009, Implementation of Section 902 and Section 1515(b)" which permits the United States Comptroller General or the Inspector General and their representatives to audit Project records and interview employees.

16. To obtain from KDOT and incorporate into the construction contract, the current version of the following Required Contract Provisions:

- 08-10-66 “Certification Regarding Noncollusion & History of Debarment,”
- 04-26-90 “Certification-Federal Funds-Lobbying,”
- 08-04-92 “Certification Contractual Services with Current Legislator or Legislator’s Firm,”
- “Kansas Department of Transportation Special Attachment (Civil Rights and Nondiscrimination),”
- FHWA-1273 “Federal-Aid Construction Contracts,”
- 01-07-09 “Revisions to FHWA 1273,”
- 11-03-80 “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246),”
- 11-15-96 “Specific Equal Employment Opportunity Contractual Requirement,”
- 07-19-07 “‘Buy America’ Materials,” and
- 09-06-94 “US Dept of Transportation Fraud Hotline”

17. To construct the Project in accordance with the plans and specifications, and supervise the construction and administer the payment due the contractor, including the portion of cost borne by the Secretary. The participating items shall be shown separated and listed apart from the non-participating items on both the final design plans and the bid documents. The specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

18. To provide the construction inspection necessary to determine substantial compliance with the design plans, the specifications, Project provisions, this Agreement and a construction administration agreement. The City agrees to execute a construction administration agreement with the Secretary.

- a. If the City performs some or all of the construction inspection with City employees who charge their time to the Project rather than overhead, the City will complete on-line and submit electronically the “MONTHLY EMPLOYMENT REPORT,” DOT Form 1589 as required by Required Contract Provision 03-10-09-R7. This requirement applies even if the City limits the use of Recovery Act funds to the construction contract and fails to use Recovery Act funds for the City’s construction inspection.
- b. If the City retains a third party to perform some or all of the construction inspection, the City will incorporate into the construction inspection contract the current Required Contract Provision 03-10-09-R7 which requires the consultant to complete on-line and submit electronically the “MONTHLY EMPLOYMENT REPORT,” DOT Form 1589. This requirement applies even if the City limits the use of Recovery Act funds to the construction contract and fails to use Recovery Act funds for the construction inspection contract.
- c. If the City retains a third party to perform some or all of the construction inspection, the City will incorporate into the construction inspection contract the current Required Contract Provision 04-03-09-R3 which permits the United States

Comptroller General or the Inspector General and their representatives to audit Project records and interview employees.

19. To be responsible for zero percent (0%) of the total actual costs of construction, which includes the cost of all construction contingency items, and construction administration. up to a project construction cost of \$800,750 and to be responsible for 100% of the total actual cost of construction and construction engineering that exceeds \$800,750. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, rights of way, and utility adjustments for the Project.

20. To maintain a complete set of final plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all of the above-mentioned documents to the Secretary.

21. When the Project is completed and final acceptance is issued by the City, it will, at its own cost and expense, maintain the Project. Upon notification by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

22. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

23. During the useful life of the Project any change in the use of the real property will require written approval by the Secretary. After the Project is completed and approved, the City agrees not to change the use of the real property for the Project. If the City determines the use of the real property for the Project is to be changed, the City agrees the change in the use of the real property will require prior written approval by the Secretary.

24. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way within their respective jurisdictions as shown on the final design plans for this Project and they will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting providing, however, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project. All right of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state laws.

25. To locate and shall be responsible for all costs necessary to remedy or clean-up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements and access rights acquired by the City.

For any hazardous waste site, including, but not limited to, leaking underground storage tanks, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the Parties executing this Agreement any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

The City by signing this Agreement with the Secretary 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 rights of way, easements, and access rights acquired by the City. The City reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the City.

The term 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. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference, and include, but 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. § 65-3431 *et seq.*, Hazardous Waste.

The standards to establish cleanup of a hazardous waste site, include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and the City, and county standards where the hazardous waste site is located.

26. Upon request by the Secretary, the City agrees to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of KDOT and all costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, construction engineering, rights of way, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

27. To participate and cooperate with the Secretary in any audit of the Project by the Secretary. To participate and cooperate with the Secretary in any audit of the Project undertaken by FHWA, the United States Comptroller General, or the Inspector General and their representatives as provided in Required Contract Provision 04-03-09-R3. The City shall make its records and books

available to representatives of the Secretary and/or the FHWA for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with federal funds by the City for items considered non-participating or if any such audits result in disallowance of costs for other reasons, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. The estimated cost for construction is \$800,750 for a total estimated cost of \$800,750. It is further mutually agreed the maximum allowable reimbursable cost figure of \$800,750 is to be used for encumbrance purposes by KDOT and no adjustments will be made based on the actual Project costs.

2. If any items are found to be non-participating by the Secretary, acting in his or her own behalf and on behalf of FHWA, the total cost of these items will be paid for by the City.

3. All change orders shall be reviewed and approved by the Secretary prior to the City authorizing the work associated with such change order. If the City has not received prior approval, then the work will be considered non-participating and will be paid for by the City.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City and as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, 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 and specifications.

5. It is the policy of the Secretary to make any final payments to the City for services related to the Highway program in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations and in 49 C.F.R. § 18 *et seq.*, require an audit be performed by an independent certified public accountant in accordance with those standards. All information audited shall comply with 49 C.F.R. § 18 *et seq.*

The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Secretary's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Secretary and the City agree as the Single Audit Report becomes available for the reimbursement period (normally within a period of 1-2 years after the Project has closed), the Secretary will review the Single Audit Report for items which are declared as not been eligible for reimbursement. The City agrees if payment has been made to the City for items subsequently found to be not eligible for reimbursement by audit, the City will refund to the Secretary the total amount of monies paid for same. The City further agrees to make such payment to the Secretary within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

6. It is not the intent of this Agreement or the Project provided herein to create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. § 771.135 (hereinafter referred to as "4(f) status"), except as hereinafter expressly provided.

Unless otherwise stated below in this section, it is agreed the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic, environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental thereto.

The Parties agree for purposes of any future determinations of 4(f) issues as required by 49 U.S.C. § 303 or regulations adopted thereunder, the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

7. 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, shall 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 the approval of the Secretary.

8. The provisions found in KDOT's Civil Rights Special Attachment No. 2 attached hereto are hereby incorporated into this Agreement by reference and made a part hereof.

9. The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated into this Agreement by reference and made a part hereof.

10. Required Contract Provision 03-10-09-R7 "American Recovery and Reinvestment Act of 2009, Reporting Requirements for Recovery Act Contracts" is attached to and incorporated into this Agreement.

11. Required Contract Provision 04-03-09-R3 "American Recovery and Reinvestment Act of 2009, Implementation of Section 902 and Section 1515(b)" is attached to and incorporated into this Agreement.

12. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year

13. It is further understood this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City and their successors in office.

14. It is expressly agreed no third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms of provisions of this Agreement.

15. It is mutually agreed the Project will be constructed within the limits of the existing public property. Necessary utility adjustments will be made prior to submission of final plans. The expense of removal or adjustment of utilities and encroachments located on public rights of way or easement shall be borne by the owner or the City.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

THE CITY OF LAWRENCE, KANSAS

CITY CLERK

MAYOR

Debra L. Miller
Secretary of Transportation

(SEAL)

BY: _____
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

INDEX OF ATTACHMENTS

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- Attachment No. 2 - Civil Rights Act of 1964 & Rehabilitation Act of 1973
- Attachment No. 3 - Contractual Provisions Attachment
- Attachment No. 4 - Construction Administration Provisions
- Attachment No. 5 - Required Contract Provision 03-10-09-R7 “American Recovery and Reinvestment Act of 2009, Reporting Requirements for Recovery Act Contracts”
- Attachment No. 6 - Required Contract Provision 04-03-09-R3 “American Recovery and Reinvestment Act of 2009, Implementation of Section 902 and Section 1515(b)”

DESIGN ENGINEERING REQUIREMENTS

Scope of Design Services:

- (1) Prepare detailed drawings and specifications in accordance with the American Association of Highway and Transportation Officials (AASHTO) design standards, the American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines and KDOT's Design Engineering Requirements, the current version of the City's standard specifications and the rules and regulations of FHWA pertaining thereto. The City shall provide for design exceptions in accordance with 23 C.F.R. § 625.
- (2) Make the necessary surveys to determine the extent of rehabilitation to meet the necessary requirements.
- (3) Prepare and furnish to KDOT the requested number drawings of preliminary construction plans for field/office check. These plans shall consist of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, material and such other elements as may be appropriate.
- (4) Field/Office check the Project with a representative of Program and Project Management.
- (5) Complete drawings and make necessary revisions made at a field check and/or an office check review or by recommendations, errors, or omissions at any time prior to the completion and final acceptance of the construction contract.
- (6) Complete the plans, include the specifications and necessary bidding and contract documents.
- (7) Submit required number of completed sets of plans to KDOT for final review along with an updated detailed cost estimate.

KANSAS DEPARTMENT OF TRANSPORTATION

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

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN
MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following “Nondiscrimination Clauses”.

CLARIFICATION

Where the term “consultant” appears in the following “Nondiscrimination Clauses”, the term “consultant” is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant’s assignees and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

- 1) **Compliance with Regulations:** The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontractors, including Procurements of Material and Equipment:** In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by

the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or natural origin.
- 6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with this Order.

Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

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. 1-01), 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.
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 cancelled, 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 ADA, 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.

 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 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 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 of 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 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."

CONSTRUCTION ADMINISTRATION PROVISIONS

SCOPE OF CONSTRUCTION ADMINISTRATION SERVICES

Services To Be Provided By The Consultant

The Consultant agrees to:

- (a) Attend all conferences designated as required to meet the terms of the Agreement.
- (b) Perform the activities required under the Agreement in a timely manner to avoid delay to the Contractor.
- (c) Become familiar with the plans, the Construction Contract Documents, and the Contractor's proposed schedule of operations prior to beginning fieldwork.
- (d) Perform the field operations in accordance with accepted safety practices.
- (e) Furnish all equipment required to accomplish the work.
- (f) Provide for personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under the Agreement.
- (g) Prepare and submit overrun and underrun requests KDOT for approval prior to initiation.
- (h) Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required or as are applicable to the Project.

Services To Be Provided By The Secretary

The Secretary agrees to:

- (a) Designate an authorized representative with the duties and responsibilities set forth in the General Responsibilities and Duties of the Agreement.
- (b) Provide such assistance and guidance to City as may be reasonably necessary to perform and complete the Agreement in conformance with Federal and State laws.
- (c) Reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

**REQUIRED CONTRACT PROVISIONS
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
REPORTING REQUIREMENTS FOR RECOVERY ACT CONTRACTS**

This Project is funded partially or wholly by funds appropriated to the state of Kansas under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act). The Recovery Act requires Recipients of Recovery Act funds to collect and compile information for submission to the Federal Highway Administration (FHWA) and United States Congress. Recipients include the Kansas Department of Transportation (KDOT); local public authorities (LPA's) such as Cities, Counties, and Metropolitan Planning Organizations; and other transit agencies. Recipients are required to complete monthly reports containing employment information for the Project and include a provision in their contracts for contractors, subcontractors, and lower-tier subcontractors to complete monthly reports containing employment information for the Project. Recipients must meet these reporting requirements to obtain Recovery Funds.

I. DEFINITIONS. For purposes of this Required Contract Provision only:

a. The term Contractor includes:

- (1) An LPA, transit agency, or other recipient of funds appropriated under the Recovery Act (Contractor Recipient).
- (2) An entity contracting with the Secretary of Transportation (Secretary) or Contractor Recipient to complete a construction contract (Construction Contractor). The term construction contract means an agreement to perform physical construction of a project using Recovery Act funds.
- (3) An entity contracting with the Secretary or a Contractor Recipient to complete a consulting contract (Contractor Consultant). The term consulting contract means:
 - (a) An agreement to perform Design Services using Recovery Act funds. Design Services include preliminary engineering and technical services or designer construction services such as drawing reviews and plan revisions during construction.
 - (b) An agreement to perform Inspection Services using Recovery Act funds. Inspection Services include engineering and administrative supervision of a construction contract.
 - (c) An agreement to perform Inspection Services for a construction contract that uses Recovery Act funds, even though the Inspection Services are not being paid from Recovery Act funds.

b. The term subcontractor includes:

- (1) An entity contracting with a Construction Contractor to perform part of the physical work. The term subcontractor does not include entities that supply materials needed to fulfill the construction contract.
- (2) An entity contracting with a Contractor Consultant to perform part of the Design Services or Inspection Services.

c. The term lower-tier subcontractor includes:

- (1) An entity contracting with a subcontractor to perform part of the physical work. The term lower-tier subcontractor does not include entities that supply materials needed to fulfill the subcontract agreement.
- (2) An entity contracting with a subcontractor to perform part of the Design Services or Inspection Services.

II. MONTHLY EMPLOYMENT REPORT. DOT Form 1589 (in lieu of Form FHWA-1589)(Sample Attached)

a. Entities obligated to file DOT Form 1589.

- (1) The Construction Contractor shall complete a "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, beginning with the Notice to Proceed date and ending with the Notice of Acceptance of Contract.
- (2) The Contractor Consultant shall complete a "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, beginning with the Notice to Proceed date and ending with the date the Contractor Consultant completes all Services the consulting contract requires.

(3) The Contractor Recipient shall complete a “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589. The Contractor Recipient shall begin reporting on the Notice to Proceed date for the construction contract or the Notice to Proceed date for the consulting contract, whichever occurs first. The Contractor Recipient shall end reporting on the Notice of Acceptance of Contract for the construction contract or on the date the Contractor Consultant completes all Services for the consulting contract, whichever occurs last.

b. All Contractors shall complete the “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, electronically on KDOT’s website by accessing the Economic Stimulus link at www.ksdot.org or using the link at www.ksdot.org/EconomicRecovery.asp and then the Recovery Act Reporting link.

On KDOT Let Projects: The Contractor shall select the box for KDOT Let Projects. The Construction Contractor, Contractor Consultant, or Contractor Recipient shall enter its Contractor number (the unique number KDOT has assigned to each entity that transacts business with KDOT—not the Contractor’s FEIN number). After the Contractor enters its Contractor number, the website will generate a list of projects/contracts for that Contractor number and allow the Contractor to:

- (1) select the REPORT, DOT Form 1589, for desired project/contract,
- (2) fill in the required information on the REPORT for that project/contract,
- (3) save the REPORT each time data is entered, and
- (4) submit the REPORT for that project/contract upon completion of the REPORT.

On Non-KDOT Let Projects: The Contractor shall select the box for Projects Not Let by KDOT. The Construction Contractor, Contractor Consultant, or Contractor Recipient shall enter its Contractor number (the unique number KDOT has assigned to each entity that transacts business with KDOT—not the Contractor’s FEIN number). If the Construction Contractor or Contractor Consultant does not have a Contractor number with KDOT, obtain a number by contacting the KDOT Director of Operations Office at 785-296-2235. In addition to entering its Contractor number, the Contractor will have to enter the Contract Number between KDOT and the Entity letting the Project. The Entity letting the Project should have furnished this information to the Contractor. After the Contractor has entered its Contractor number and the Contract Number between KDOT and the Letting Entity, the website allows the Contractor to:

- (1) fill in the required information on the REPORT for that project/contract,
- (2) save the REPORT each time data is entered, and
- (3) submit the REPORT for that project/contract upon completion of the REPORT.

The website will not permit the Contractor to submit the REPORT until all fields have been completed.

c. Construction Contractors and Contractor Consultants shall require each subcontractor and lower-tier subcontractor to complete and submit to that Contractor a “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589 or Like Report, so these Contractors can include that information in the their on-line electronic REPORT as required by **Subsection II.b.**

(1) A copy of DOT Form 1589 is available to subcontractors and lower-tier subcontractors in Microsoft Excel format on KDOT’s internet. Go to www.ksdot.org, select Doing Business With Us, then Letting Information, then DOT Form 1589.

(2) In lieu of DOT Form 1589, Construction Contractors and Contractor Consultants may develop a Like Report for subcontractors and lower-tier subcontractors to furnish the required information to the Contractors. However, such Like Report shall contain the same information required on DOT Form 1589.

(3) Upon completion, subcontractors and lower-tier subcontractors shall furnish the DOT Form 1589 or Like Report to the Construction Contractor or Contractor Consultant, whichever is appropriate. Contractors, subcontractors, and lower-tier subcontractors shall retain copies of the DOT Form 1589 or Like Report for subsequent review and auditing. These Reports should not be sent to the Secretary or Contractor Recipient unless and until specifically requested. As already stated, the Secretary will receive the Contractor’s electronic DOT Form 1589 on-line through the Economic Stimulus link.

d. Completing DOT Form 1589

- (1) Enter the Month and Year being reported in Box 1.
- (2) The Contracting Agency is the owner of the Project. Even if KDOT lets and administers the Project as the Contractor Recipient’s agent, the Contractor Recipient is the Contracting Agency and will be the entity identified in Box 2 of DOT Form 1589. If the Contractor Recipient is completing the DOT Form 1589 for its direct, on the

project employees as required, the Contractor Recipient will be the Contracting Agency as well as the Contractor identified in Box 7 of DOT Form 1589.

(3) All Contractors (including Contractor Recipients) shall obtain a D-U-N-S number (Dun & Bradstreet Number). Contractors may acquire the D-U-N-S number using the following link: http://www.dnb.com/us/duns_update/. Subcontractors do not have to obtain a D-U-N-S number.

(4) Only Construction Contractors report Disadvantaged Business Enterprise (DBE) information on DOT Form 1589. For the DBE Total Payments to Date, report the total, accumulated payments made to all Kansas-certified DBE's, even if the Project had a self-determined goal or no DBE goal.

(5) For the Number of Employees, report the number of direct, on-the-project employees. This includes employees on the job site, in the field office, in the home office, and in alternative locations who charge time to the project rather than overhead and thus are considered actively engaged in the project. If a Contractor or Subcontractor has no employees to report for that reporting month, enter a "0" in the "Employees" column.

(6) For the Number of Hours, include regular and overtime hours for all direct, on-the-project employees. If a Contractor or Subcontractor has no employees and thus no hours to report for that reporting month, enter a "0" in the "Hours" column.

(7) For the Payroll information, include the direct labor paid for the number of hours reported for the number of direct, on-the-project employees reported. Do not include fringe benefits or overhead for these employees. If a Contractor or Subcontractor has no employees and thus no payroll to report for that reporting month, enter a "0" in the "Payroll" column.

(8) For Subcontractors, enter the names of all subcontractors who will be working on the Project.

- On KDOT-let Projects and for Construction Contractors, the subcontractors' names are populated into the DOT Form 1589 based on the Request for Approval of Subcontractor Form 259. Contractor Consultants will have to manually enter the names of all their subcontractors. It is critical that Construction Contractors submit all Form 259's needed for the Project on or before the Notice to Proceed and that Contractor Consultants enter the names of all their subcontractors on or before the Notice to Proceed even if those subcontractors will not be performing work at the beginning of the Project.
- On non-KDOT Let Projects, the first time the Construction Contractors and Contractor Consultants access the DOT Form 1589, the Contractor shall manually enter the names of all subcontractors who will be working on the Project. It is critical that the Contractor identify all subcontractors who will be working on the Project even if those subcontractors will not be performing work at the beginning of the Project.

(9) Further guidance may be found at www.fhwa.dot.gov/economicrecovery/index.htm.

e. Submitting DOT Form 1589.

All Contractors shall submit the completed on-line "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, on or before the 5th day of the month following the month being reported.

Examples: DOT Form 1589 for the month of June, 2009 shall be completed and submitted on or before July 5, 2009. DOT Form 1589 for the month of July, 2009 shall be completed and submitted on or before August 5, 2009.

The Contractors may compile the information at the end of the last payroll period in the month being reported rather than in the middle of a payroll period. However, be sure to include in the next "MONTHLY EMPLOYMENT REPORT" any days that were not reported in the previous calendar month.

Example: if the last payroll period for June ended June 27, 2009 and the last payroll period for July ended July 25, 2009, DOT Form 1589 for the month of July, 2009 would include employees, hours, and payroll for the days of June 28-30 and July 1-25. The Contractor shall then complete and submit the July 2009 DOT Form 1589 on or before August 5, 2009.

Construction Contractors and Contractor Consultants shall require subcontractors and lower-tier subcontractors to submit their "MONTHLY EMPLOYMENT REPORT" (DOT Form 1589 or Like Report) within the amount of time the Construction Contractor or Contractor Consultant believes is necessary to enable that Contractor to input the data on-line and submit the Report by the 5th day of the Month. A subcontractor's or lower-tier subcontractor's failure to timely furnish to the Contractor a "MONTHLY EMPLOYMENT REPORT" does not excuse the Contractor's obligation to complete and submit the "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, on-line on or before the 5th day of the Month.

III. SANCTIONS

a. For Construction Contractors: If the Construction Contractor fails to complete and submit the on-line “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, on or before the 5th day of the month following the month being reported as required in subsection II.e above, the Secretary or other Contractor Recipient may impose one or more of the following sanctions:

(1) Withhold payment of progress payments until the Construction Contractor complies with the reporting requirements of this Required Contract Provision.

(2) Declare the Construction Contractor a non-responsible Contractor under **subsection 102.18** of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2007 Edition) (Standard Specifications), thereby precluding award of a contract to the Contractor.

(3) Deny the Construction Contractor’s approval as a subcontractor on other projects under Standard Specifications **subsection 105.9**.

(4) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the “MONTHLY EMPLOYMENT REPORT” has not been submitted after the 5th day of the month as required.

(5) Declare the Construction Contractor in breach of contract under Standard Specifications **subsection 108.9**. However, rather than the 10-day cure time allowed under Standard Specifications **subsection 108.9**, the Construction Contractor shall have 2 calendar days to cure the default by providing the “MONTHLY EMPLOYMENT REPORT”. If the default is not cured within this 2 calendar days, the Secretary may terminate the Construction Contractor from the Project and exercise the Secretary’s remedies under Standard Specifications **subsection 108.9** or the Secretary may allow the Construction Contractor to remain on the Project. Under either alternative, the Secretary may compile or hire a third party to compile and furnish the required information at the Contractor’s and Surety’s expense.

(6) Exercise termination or other remedy available in the construction contract between the Construction Contractor and Contractor Recipient.

(7) Take other action that FHWA authorizes for non-compliance with this Required Contract Provision.

b. For Contractor Consultants: If the Contractor Consultant fails to complete and submit the on-line “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, on or before the 5th day of the month following the month being reported as required in subsection II.e above, the Secretary or other Contractor Recipient may impose one or more of the following sanctions:

(1) Withhold payment of progress payments until the Contractor Consultant complies with the reporting requirements of this Required Contract Provision.

(2) Refrain from negotiating with the Contractor Consultant on other Engineering Agreements until the Contractor Consultant complies with the reporting requirements of this Required Contract Provision.

(3) Deny the Contractor Consultant’s approval as a subcontractor on other projects.

(4) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the “MONTHLY EMPLOYMENT REPORT” has not been submitted after the 5th of the month as required.

(5) Declare the Contractor Consultant in breach of contract. However, rather than utilizing procedures outlined in the KDOT’s Consultant Standard of Care Policy, the Contractor Consultant shall have 2 calendar days to cure the default by providing the “MONTHLY EMPLOYMENT REPORT”. If the default is not cured within this 2 calendar days, the Secretary may terminate the Contractor Consultant from the Project or the Secretary may allow the Contractor Consultant to remain on the Project. Under either alternative, the Secretary may compile or hire a third party to compile and furnish the required information at the Contractor Consultant’s expense.

(6) Exercise termination or other remedy available in the consulting contract between the Contractor Consultant and Contractor Recipient.

(7) Take other action that FHWA authorizes for non-compliance with this Required Contract Provision.

c. For Contractor Recipients. If a Contractor Recipient fails to complete and submit the on-line “MONTHLY EMPLOYMENT REPORT”, DOT Form 1589, on or before the 5th day of the month following the month being reported as required in subsection II.e above, the Secretary may impose one or more of the following sanctions:

(1) Refrain from entering into other agreements with the Contractor Recipient for other projects until the Contractor Consultant complies with the reporting requirements of this Required Contract Provision.

(2) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the “MONTHLY EMPLOYMENT REPORT” has not been submitted after the 5th of the month as required.

(3) Declare the Contractor Recipient in breach of contract and compile or hire a third party to compile and

furnish the required information at the Contractor Recipient's expense.

(4) Require the Contractor Recipient to reimburse the Secretary for Recovery Act funds lost because of the Recipient's failure to comply with this Required Contract Provision.

(5) Take other action that FHWA authorizes for non-compliance with this Required Contract Provision.

d. The Secretary is responsible to the FHWA for administering this provision even if the Contractor Recipient lets the project. Thus, the Contractor Recipient shall obtain the Secretary's permission before imposing one or more of the sanctions identified in **subsection III.a or III.b.**

08-04-09 C&M (CB)

MONTHLY EMPLOYMENT REPORT
AMERICAN RECOVERY AND REINVESTMENT ACT

1. Report Month (mm/yy)	2. Contracting Agency	3. Federal-Aid Project Number
4. State Project Number or ID Number	5. Contract Number	6. Project Location: State,County, Federal Reg.

7. CONTRACTOR NAME AND ADDRESS	
Name:	
Address:	
City:	State:
Zip:	

8. Contractor DUNS number:		9. DBE Contract Goal:	
10. DBE Commitment:		11. DBE Total Payment To Date:	

12. Employment Data

	EMPLOYEES	HOURS	PAYROLL
Prime Contractor Direct, On-Project Jobs (see guidance for definitions)			

Subcontractor Direct, On Project Jobs	
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
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90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100

[illegible]

Continue on Sheet 2 for additional lines	Prime and Subcontractor Totals	0	0	-
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13. PREPARED BY CEO or Payroll Official:		DATE:
Name:		
Title:		

**REQUIRED CONTRACT PROVISIONS
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009
IMPLEMENTATION OF SECTION 902 AND 1515(b)**

This Project is funded partially or wholly by funds appropriated to the state of Kansas under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act). The Recovery Act requires Recipients of Recovery Act funds to allow representatives of the United States Comptroller General and Office of Inspector General to examine records and interview persons of firms working on Contracts that use Recovery Act Funds. Recipients of Recovery Act funds include the Kansas Department of Transportation (KDOT); local public authorities (LPA's) such as Cities, Counties, and Metropolitan Planning Organizations; and other transit agencies.

I. DEFINITIONS: For purposes of this Required Contract Provision only,

a. The term Contract includes:

- An agreement between the Secretary and another Recipient of Recovery Act funds.
- A construction contract. The term construction contract means an agreement to perform physical construction of a project using Recovery Act funds.
- A consulting contract. The term consulting contract means:
 - An agreement to perform Design Services using Recovery Act funds. Design Services include preliminary engineering and technical services or designer construction services such as drawing reviews and plan revisions during construction.
 - An agreement to perform Inspection Services using Recovery Act funds. Inspection Services include engineering and administrative supervision of a construction contract.
 - An agreement to perform Inspection Services for a construction contract that uses Recovery Act funds, even though the Inspection Services are not being paid from Recovery Act funds.

b. The term Contractor includes:

- An entity contracting with a Recipient of Recovery Act funds to complete a construction contract.
- An entity contracting with a Recipient of Recovery Act funds to perform a consulting contract.

c. The term subcontractor includes:

- An entity contracting with a Contractor as defined above;
- An entity contracting with a subcontractor or lower-tier subcontractor to perform part of the physical work for the construction contract or to perform engineering or other technical services for the consulting contract;
- An entity contracting with a Contractor, a subcontractor, or a lower-tier subcontractor to supply materials needed to fulfill the construction contract or the consulting contract.

II. RECOVERY ACT SECTION 902. COMPTROLLER GENERAL'S AUTHORITY.

Section 902 of the American Recovery and Reinvestment Act (ARRA or Recovery Act) of 2009 requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

“(1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and

(2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

III. RECOVERY ACT SECTION 1515(b) OIG'S AUTHORITY.

Section 1515(b) of the ARRA or Recovery Act provides that for "each contract or grant awarded using ARRA funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), has the authority to:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, [subcontractors], grantee, subgrantee, or any [state or local government] agency [administering the contract], regarding such transactions."

Accordingly, the Inspector General and any representatives of the Inspector General shall have the authority and rights as provided under Section 1515(b) of the ARRA with respect to this contract, which is funded with funds made available under the ARRA. Section 1515(b) further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

IV. AUDITS.

Nothing in this Required Contract Provision limits the existing authority of the Federal Highway Administration or any other governmental entity to audit the contract.

05-12-09 C&M (CB)