MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made and entered into by and between the City of Lawrence, Kansas, a city of the first class under the laws of the State of Kansas, (hereinafter referred to as the "City") and the University of Kansas, an educational institution, public body, and independent agency of the State of Kansas (hereinafter referred to as the "University"), the City and the University from time to time herein collectively referred to as "the parties."

WHEREAS, the City and the University have explored the feasibility of coordinating and/or consolidating existing Lawrence public transit services and University transit services for the best interests of the City and University communities and are working together towards the goal of providing seamless service to all transit users, regardless of the level of coordination, consolidation, or possibility of a future merger; and

WHEREAS, the City and the University entered into a Letter of Intent regarding the establishment of a coordinated, consolidated or merged transit system; and

WHEREAS, implementation of that Letter of Intent requires the parties to evaluate in greater detail the options regarding the reconfiguration of routes, schedules and other aspects of the existing transit systems, so that the steps needed to successfully implement seamless service can be identified; and

WHEREAS, the City, in cooperation with the University, has issued a RFP (RFP No. R09002, issued December 17, 2008) for the services of a qualified transit planning, research and design firm (or team of firms) to develop a plan for a coordinated system of fixed routes and schedules for both the City's current public transportation system, called the T, and the University's current transportation system, "KU on Wheels" (the "Services").

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, the parties agree as follows:

- 1. The City and the University will mutually agree on the costs to be allocated for the Services and will work cooperatively to develop the scope of work. The City and the University shall each be responsible for 50% of the costs of the Services, or in the event that City receives KDOT or FTA funding for the Services, 50% of the local "match." In no event shall the share of the total cost of the Services paid by either the City or University exceed \$10,000. Payment of the vendor for the Services shall be made by the City, with the University reimbursing the City for amounts owed by University within 30 days of receipt of invoice. Both parties shall be provided with an opportunity to participate in review, and provide comment on, any interim vendor work product and the final design. Participation in this MOA and the Services does not imply endorsement or commitment by the parties to implement the recommendations of the Services.
- 2. This MOA sets forth the entire agreement between the parties with respect to the subject matter contained herein and supersedes all prior agreements, negotiations, and discussions concerning any matter contained herein. The parties agree to cooperate and take such action as is necessary to update and amend this MOA as needed to address the issues outlined herein.

- 4. With respect to claims arising from activities conducted pursuant to the MOA, each party shall be responsible for its own negligence, or that of its employees or agents, but only in the manner and to the extent provided by applicable State laws, and nothing in the MOA shall create any obligation to defend or indemnify the other party. In the event of claims by third parties arising from such activities, the parties will cooperate in defense of such claims.
- 5. This MOA shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors, and assigns.
- 6. This MOA shall be governed by the laws of the State of Kansas. It is agreed by and between the parties that, should any dispute arise, that cannot be resolved through negotiations and by mutual consent, concerning the validity and effect of this MOA, or of any breach of the MOA herein, venue of action concerning such dispute shall be in the District Court of Douglas County.
- 7. Each provision of this MOA shall be considered separable and if for any reason a provision which is not essential to the effectuation of the basic purposes of the MOA is determined to be invalid or contrary to any existing or future law, such invalidity shall not impair the operation of or effect of those provisions of this MOA that are valid.
- 8. The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. -01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed in duplicate as of the date and year hereinafter written.

CITY OF LAWRENCE	UNIVERSITY OF KANSAS
	SR.U.P.
By:	By:
	1/4/10
Date	Date / /

State of Kansas Department of Administration DA-146a (Rev. 1-01)

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 aftered 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 22^{nd} day of December, 2008.

- 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.
- 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.
- 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 Discrim ination 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. 44-116; (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 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 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.

- 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. <u>Arbitration, Damages, Warranties</u>: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding erbitration, 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. <u>Insurance</u>: 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. 48-1101 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."