

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN PB AMERICAS, INC. AND
THE CITY OF LAWRENCE, KANSAS**

THIS PROFESSIONAL SERVICES AGREEMENT, entered into this _____ day of _____, 2010, by and between the City of Lawrence, Kansas, a municipal corporation, hereinafter called the "City", and PB Americas, Inc., hereinafter called the "Consultant".

WHEREAS the City and the Lawrence-Douglas County Metropolitan Planning Organization are in need of certain services; and

WHEREAS the City on behalf of the Lawrence-Douglas County Metropolitan Planning Organization agrees to contract for certain services; and

WHEREAS the Consultant has expertise in on-call travel demand and transportation modeling and related activities; and

WHEREAS the City desires to engage Consultant as an independent contractor to perform the services described in the scope of work described in the attached Exhibit A; and

WHEREAS Consultant is willing to provide such services on behalf of City on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

1. ENGAGEMENT

City hereby engages Consultant as an independent contractor to perform the services hereinafter set forth, and Consultant hereby accepts such engagement.

2. SERVICES

2.1. Scope of Services

Consultant shall perform those services specifically described in Exhibit A, attached hereto and incorporated by reference herein (the "Contract Services"). The parties may agree at any time to expand or modify the Scope of the Contract Services.

2.2. Subcontract Services

Consultant may not subcontract any of the Contract Services without the written consent of the City.

2.3. Time of Performance

Upon execution of this agreement, Consultant shall commence performance of the Contract Services in accordance with the time periods set forth in Exhibit A.

The "Initial Term" of this Agreement shall commence upon execution of this Agreement and shall expire on December 31, 2011. The City may exercise an option to extend this Agreement for one year to December 31, 2012. The provisions regarding indemnity and insurance shall survive expiration or termination of this Agreement.

- 2.4. Consultant shall provide sufficient qualified personnel to perform all services as required herein, including but not limited to inspections and preparation of reports, as reasonably requested by representatives of the City.
- 2.5. In performing the services identified in the attached Exhibit A, the Consultant shall perform all steps necessary to the full and effective performance of the tasks specifically referenced in Exhibit A.

3. COMPENSATION AND EXPENSES

3.1. Compensation

City shall pay Consultant for the hours spent by Consultant's professional personnel performing Contract Services, subject to paragraph 3.3 contained herein. City shall also pay Consultant for all Subcontract Services authorized by the City pursuant to Section 2.2., hereof. It is understood that the amounts payable to Consultant pursuant to the terms of this Agreement are not dependent upon the nature of the conclusions reached or the reports or advice given by Consultant in the course of performing the Contract Services or upon the success or lack of success of the City's project.

3.2. Expense Reimbursement

Subject to paragraph 3.3, below and in addition to City's payment of the consideration provided under Section 3.1 hereof, City shall reimburse Consultant for all out-of-pocket expenses and related administrative expenses incurred by Consultant in connection with its performance of the Contract Services, including, but not limited to, long-distance telephone calls, postage, messengers and other communications expenses, and the cost of computer time.

3.3. Maximum Compensation and Reimbursement

Unless otherwise agreed, in writing, by the parties, the maximum total amount payable to Consultant (1) as charges for Contract Services and Subcontract Services pursuant to Section 3.1 hereof; and (2) as reimbursement for out-of-pocket expenses pursuant to Section 3.2 hereof (in the aggregate, the "Maximum Amount"), shall not exceed Twenty Thousand Dollars (\$20,000.00). Unless otherwise agreed by the parties, Consultant shall not be required to provide Contract Services or incur any related expenses to the extent the cost of such Contract Services and related expenses would exceed the Maximum Amount. Compensation and Expense Reimbursement costs shall be based on the amounts indicated in Exhibit B, attached hereto and incorporated by reference herein.

3.4. Payment Terms

Consultant shall send invoices to City no more frequently than once per month, reflecting compensation due for services rendered by Consultant and reimbursement due for expenses incurred by Consultant. All expenses claimed shall be listed individually and shall be accompanied by receipts or other applicable documentation. All invoices are payable upon receipt by City. Payment will be made by the City within 45 days of receipt of invoice.

4. TERMINATION OF AGREEMENT

The parties may terminate this Agreement at any time for convenience or cause upon ten (10) days notice to the other party. In the event the City terminates for its convenience, City shall pay Consultant for Contract Services satisfactorily provided by Consultant prior to such termination, and for all expenses incurred by Consultant prior to such termination in connection with the performance of the Contract Services (including, without limitation, the cost of any Subcontract Services agreed to by the parties pursuant to Article 2, Section 2.2). Under no circumstances will the Consultant be entitled to anticipated profits or consequential damages.

5. REPORTS AND DOCUMENTS

5.1. Property and Possession

All reports, studies, analysis, memoranda and related data and material as may be developed during the performance of this Agreement shall be submitted to and be the exclusive property of the City, which shall have the right to use the same for any purpose without any further compensation to Consultant.

5.2. Status of Documents upon Termination

If this Agreement is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared pursuant to this Agreement shall be immediately transmitted to the City by Consultant.

5.3. Confidentiality

Consultant shall not release to any person except City's representatives and others authorized by City any reports or related materials prepared for City pursuant to Consultant performance of the Contract Services and maintained confidentially by City. However, this Agreement does not preclude Consultant from performing any service (whether or not similar in nature to a Contract Service) on behalf of other clients in the city or elsewhere.

All reports and documents prepared, assembled or compiled by Consultant pursuant to the terms of this Agreement are to be considered confidential and Consultant agrees that it will not, without prior written approval by the City, submit or make the same available to any individual, agency, public body or organization other than the City, except as may be otherwise herein provided, subject to the provisions of the Kansas Open Records Act.

6. COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS AND RULES

Consultant agrees that:

- 6.1. Consultant shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry, sexual orientation, familial status or age;
- 6.2. In all solicitations or advertisements for employees, Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 6.3. If Consultant fails to comply with the manner in which Consultant reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
- 6.4. If Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
- 6.5. Consultant shall include the provisions of paragraphs (6.1) through (6.4) above in every sub-contract so that such provisions will be binding upon such sub-contractors; and
- 6.6. Consultant shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

7. INSURANCE

7.1 General

Consultant shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals thereof on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

7.2 Notice of Claim Reduction of Policy Limits

Consultant, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Consultant shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Consultant's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

a. General Liability:

General Aggregate: \$500,000
Personal & Advertising Injury: \$500,000
Each Occurrence: \$500,000

Policy must include the following:

- i) Broad Form Contractual/Contractually Assumed Liability
- ii) Independent Contractors

Name City of Lawrence, Kansas as "Additional Insured".

- b. Automobile Liability: Policy shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

i) Any Auto

OR

ii) All Owned Autos (if any); Hired Autos; and Non-Owned Autos.

Limits

Each Accident, Combined Single Limits
Bodily Injury and Property Damage: \$500,000.00

Name City of Lawrence, Kansas as "Additional Insured".

- c. Workers' Compensation and Employer's Liability: This insurance shall protect the Consultant against all claims under applicable state workers' compensation laws. The Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation: Statutory Employer's Liability:

Bodily Injury by Accident \$100,000 each accident
Bodily Injury by Disease \$500,000 policy limit
Bodily Injury by Disease \$100,000 each employee

If Consultant has no employees, a waiver form provided by the City must be executed.

- d. Professional Liability: The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000), and shall provide the City with certification thereof.
 - e. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:
 - 1) Is licensed to do business in the State of Kansas;
 - 2) Carries a Best's policyholder rating of A- or better;

AND

 - 3) Carries at least a Class VIII financial rating.
- OR**
- Is a company mutually agreed upon by the City and Consultant.
Certification of insurance coverage shall be on the City's standard Certificate of Insurance form or on forms acceptable to the City.

8. INDEMNIFICATION AND HOLD HARMLESS

The Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, commissioners, departments and divisions, its employees and agents, from any and all claims, actions, damages, costs, liabilities, settlements, judgments, expenses or lawsuits, including attorneys fees, but only to the extent caused by the Consultant's breach of contract or the negligent performance by Consultant (or by any person acting for the Consultant or for whom the Consultant is responsible).

9. QUALITY ASSURANCE

Consultant shall perform its work and services pursuant to this Agreement in accordance with the recognized professional standards prevalent in the field of on-call travel demand and transportation modeling. Further, the Consultant shall perform its work and service pursuant to this Agreement with the professional expertise, skills and knowledge of state of the art procedures and techniques in all relevant subject matters. The Consultant accordingly shall be capable of performing the necessary consulting and other services required herein and possess the ready comprehension of the required subject matter and the expertise to provide on-call travel demand and transportation modeling for the City and the Lawrence-Douglas County Metropolitan Planning Organization.

10. ENTIRE AGREEMENT

This Agreement and Exhibits A and B represent the entire and integrated Agreement between the City and the Consultant and supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Consultant. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

No oral orders, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in the Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

11. ASSIGNMENT

This Agreement is non-assignable by the Consultant and its subcontractors.

12. NOTICES

All notices, demand, requests or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by first class, registered or certified mail, return receipt requested, postage prepaid, or sent by overnight express mail, postage prepaid, return receipt requested, addressed as follows:

12.1. If to Consultant:

PB Americas, Inc.
14813 W. 95th Street
Lenexa, Kansas 66215

12.2. If to City:

David L. Corliss, City Manager
City of Lawrence, City Hall
6 East 6th Street
P.O. Box 708
Lawrence, KS 66044

13. AUTHORIZATION

Each of the persons executing this Agreement on behalf of the respective Parties represents and warrants that they have the authority to bind the Party on behalf of

whom they sign this Agreement, and that all acts requisite to the authorization to enter into this Agreement have been taken and completed.

14. INDEPENDENT CONTRACTOR

In no event, while performing the obligations under this Agreement, shall Consultant be authorized to act as an employee of the City, but shall for all purposes be deemed an independent contractor in their relation to the City. Nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent between City and Consultant.

15. KANSAS CASH BASIS LAW

The Agreement must comply with the applicable provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.* The City and/or MPO is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's and/or MPO's current budget year. In the event the City and/or MPO does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement. To the extent that the City and/or MPO does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

16. CONFLICT OF INTEREST

Consultant is currently unaware of any conflict of interest with any party affected by this Agreement. Consultant agrees that if any conflict of interest or potential conflict of interest should arise in the future, Consultant shall immediately inform the City.

17. GOVERNING LAW

This Agreement, the rights and obligations of the parties and any claims or disputes relating thereto shall be construed under the laws of Kansas.

18. LEGAL ACTIONS

Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Douglas County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.

19. FORCE MAJEURE

Neither Party shall be deemed in default of this Agreement to the extent that any delay in performance of its obligations results from any cause beyond its reasonable control and without its negligence.

20. CAPTIONS

The captions are for convenience and in no way define, limit or enlarge the scope of this Agreement or any of its Sections.

21. RECITALS

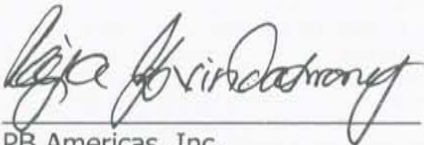
The above stated recitals are by reference incorporated herein and shall be as effective as if repeated verbatim.

22. SEVERABILITY

In the event any provision of the Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, terms, conditions, or covenant shall not be construed by the other party as a subsequent breach of the same by the other party.

IN WITNESS WHEREOF, the parties have caused the Agreement to be signed by their duly authorized representatives as of the _____ day of _____, 2010.

CONSULTANT:



PB Americas, Inc.

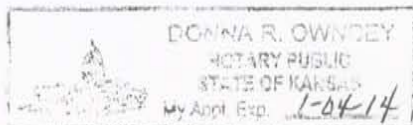
RAJA GOVINDASWAMY, VICE-PRESIDENT

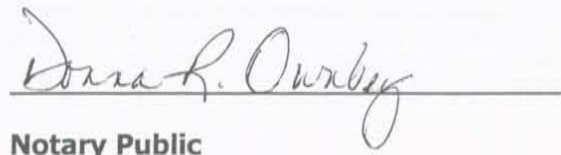
STATE OF KANSAS)
COUNTY OF ~~DOUGLAS~~)
SEDGWICK

BE IT REMEMBERED, that on this 7th day of July, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came RAJA GOVINDASWAMY, who are personally known to me to be the same persons who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same.

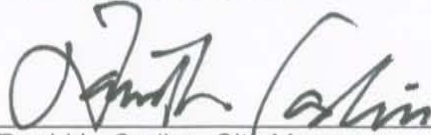
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Seal:




Notary Public

**CITY OF LAWRENCE, KANSAS, a
Municipal Corporation**



David L. Corliss, City Manager

STATE OF KANSAS)
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 30 day of July, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David L. Corliss, City Manager, who is personally known to me to be the same person who executed the within and foregoing instrument of writing and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Notary Public

Seal:



Exhibit A: Scope of Services

L-DC MPO Travel Demand Model Update – On-Call

Updating the MPO's regional travel demand model will enhance the credibility and precision of the regional model, providing the 2040 long range planning process with an improved technical basis for plan formulation and testing. Activities supporting the model update are described in the following categories:

1. **Model Assessment** – This assessment of the existing model would be summarized in a short (5-8 page) technical memo discussing a list of potential model improvements, a description of the improvements, the benefit to the MPO from each improvement, and what would need to be done to the model to implement each improvement.
Deliverable: A memo, which would form the basis for further discussions on prioritizing model improvements.
2. **Network and Zone System Review** – This would be a review of the network, focused on finding and correcting errors. This process would not be an overhaul of the existing system, nor implementation of a new system. Additionally, the zone system would be examined for "outlier" zones in terms for population or employment density. Zone boundaries would be considered for consistency and balance between the boundaries and the surrounding network level of detail.
Deliverable: an updated network and zone system, and a memo summarizing the changes that were made.
3. **Update Base Year Data** – The base year socio-economic data would be updated to the most recent available year. Statistical summary data from NHTS, LEHD, and CTPP ACS (PUMS) may be used. Population, households, and employment (by retail and non-retail category) are the primary elements of the model. Special generators, such as airports, colleges, and universities, should also be updated. The coded network should also be updated to reflect the new base year and include up to date capacity and free-flow speed information. Finally, traffic volumes at external stations should be updated, as well as trend line data for growth at external stations.
Deliverable: a comprehensive set of base year data for input into the model.
4. **Setup New Horizon Year** – An update to the forecast year from 2030 to 2040 would involve modifying the network and socio-economic data to reflect 2040 conditions. 2040 data would be based on local planning documents and discussions with city and county planning staff.
Deliverable: a comprehensive set of horizon year (2040) data for input into the model.
5. **Model Execution** – For each modeled alternative, the model execution would involve: Setting up socio-economic data and network, running the model, QA/QC and reasonableness checking of the output, and summarizing the results. This assumes only localized changes to the network

and socioeconomic system. Each modeled scenario would take approximately 28 hours of work to complete.

Deliverable: a brief memo summarizing the results of the modeled scenarios.

6. On-Call Retainer – Task for immediate response to any questions or requests from the MPO to address specific requests by public officials, review of traffic impact reports, or any other short-term needs related to model use. This retainer would cover up to 48 hours of work performed by Andrew Coe and up to 16 hours of work from Steve Ruegg.
7. Develop User's Guide – Creation of a simple users guide. This would include a model application checklist and step-by-step guidance on how to perform simple tasks. This guide would take approximately 40 hours of development time.
Deliverable: Model user's guide.
8. Formal Training – A 1-2 day training session targeted at MPO staff to train in the use of the running the model, interpreting the results, and answering questions. Staff would be given hands-on experience with TransCAD and the model.
9. Project Management and Administration - This task will include all project management and administrative activities including staff assignments, study coordination, cost tracking, invoicing, and managing staff.

Time of Performance

The "Initial Term" of this Agreement shall commence upon execution of this Agreement and shall expire on December 31, 2011. The City may exercise an option to extend this Agreement for one year to December 31, 2012.

The time frame for individual task orders will be agreed upon with the City's/MPO's project manager.

*Actual services provided by PB will be as selected by the client not to exceed the maximum contract amount, unless otherwise agreed to in writing by the parties.

Exhibit B: Estimated Hours and Fee

Task	Description	Estimated Hours				Total Hours	Cost
		Tobaben	Ruegg	Coe	Mink		
Model Update							
1	Model Assessment Report		12	8		20	\$ 2,716
2	Network and Zone System Review		12	40		52	\$ 5,287
3	Update Base Year Data		8	40		48	\$ 4,596
4	Setup New Horizon Year		4	32		36	\$ 3,262
Model Execution							
5	Model Execution -- per alternative		4	24		28	\$ 2,619
6	On-Call Retainer		16	48		64	\$ 6,621
Training							
7	Develop User's Guide		8	32		40	\$ 3,953
8	Formal Training		24	40		64	\$ 7,360
Project Management							
9	Project Management/Admin	8			8	16	\$ 2,143
Total Hours							
Labor Cost (Labor+OH+Fee)		8	88	264	8	368	\$ 38,556
Expenses		\$1,519	\$15,206	\$21,207	\$624		\$ 1,400
		\$0	\$1,000	\$400	\$0		
Total		\$1,519	\$16,206	\$21,607	\$624		\$ 39,956

** Actual services provided by PB will be as selected by the client not to exceed the maximum contract amount, unless otherwise agreed to in writing by the parties.