

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made this ___ day of _____, 2019, by and between the City of Lawrence, Kansas, a municipal corporation, and Olsson, Inc., a Kansas corporation.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), a municipal corporation, in behalf of the Lawrence-Douglas County Metropolitan Planning Organization ("MPO"), is in need of certain professional services, specifically a 23rd Street Multimodal Corridor Study.
- B.** Olsson, Inc. ("Consultant"), a Kansas corporation, has proficiency in multimodal corridor studies.
- C.** The City, in behalf of the MPO, wishes to engage Consultant, as an independent contractor, to perform the needed services, which are described in detail in the Consultant's proposal and cost proposal (affixed hereto, respectively, as Exhibits A and B and incorporated herein by reference as if set forth in full).
- D.** The Consultant is willing and able to provide the services for which the City, in behalf of the MPO, wishes to engage it and agrees to perform those services in accordance with the terms and conditions of this Professional Services Agreement, as set forth below.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Engagement. The City hereby engages Consultant as an independent contractor to perform the services hereinafter described and Consultant hereby accepts that engagement.

SECTION 2. Services.

- (a) **Scope of Services.** Consultant shall perform those services ("Contract Services") specifically described in Exhibits A and B. The parties may agree at any time to expand or modify the scope of the Contract Services. Such agreement shall be in writing and shall be affixed to this Professional Services Agreement as an Addendum.

- (b) **Subcontracting Services.** Consultant may not, without first obtaining written consent of the City and KDOT, subcontract any of the Contract Services.
- (c) **Time of Performance.** Time is an important element of this Agreement. Upon execution of this Professional Services Agreement, Consultant shall commence performance of the Contract Services in accordance with the time-table established in Exhibit A.
- (d) **Expiration.** The "Initial Term" of this Professional Services Agreement shall commence upon the execution of this document and shall expire at 11:59 p.m. on December 31, 2019, or when the Contract Services are completed, whichever occurs first. The provisions regarding indemnity and insurance shall survive the expiration of this Professional Services Agreement.
- (e) **Qualified Personnel.** Consultant shall provide sufficient qualified personnel to perform the Contract Services. Additionally, Consultant agrees to provide qualified personnel to prepare reports and to perform other duties hereunder, as may reasonably be requested by the City.
- (f) **Performance.** In performing the Contract Services, Consultant agrees to take all steps necessary for the full and effective performance of those tasks.

SECTION 3. Compensation and Reimbursement of Expenses.

- (a) **Compensation.** Subject to the limitations established at Section 3(c), the City shall pay Consultant for the actual hours that Consultant's professional staff spends performing the Contract Services. The City shall also pay Consultant for Subcontracting Services authorized by the City in accordance with Section 2(b). The parties agree that the amounts payable to Consultant for actual work performed shall in no way be dependent upon the nature of the conclusions reached or the reports or advice given by Consultant; nor are they dependent upon the success or lack of success of the City's project(s).
- (b) **Reimbursement for Expenses.** Subject to the limitations established at Section 3(c) and in addition to the City's payment of Compensation as established at Section 3(a), the City agrees to reimburse Consultant for certain out-of-pocket expenses and related administrative expenses incurred by Consultant in connection with the performance of the Contract Services established by this Professional Services Agreement, including but not limited to long-distance telephone calls, postage, messengers, mileage for transportation, hotel costs, and the costs of computer time. The parties

agree that the limitations on reimbursement for expenses, as set forth in the KDOT Travel Policy (which document is affixed hereto as Appendix E and incorporated herein by reference as set forth in full), shall apply to and govern this Professional Services Agreement.

(c) **Maximum Compensation and Reimbursement.** Unless otherwise agreed upon by the parties in writing, the maximum total amount payable to Consultant (i) as compensation for Contract Services and any Subcontracting Services under Section 3(a) and (ii) as reimbursement for expenses under Section 3(b), shall not exceed the sum of **Ninety-nine Thousand, Nine Hundred and Ninety-Three Dollars and No Cents** (\$99,993.00). Unless otherwise agreed by the parties in writing, Consultant shall not be requested to provide Contract Services or to incur related expenses to the extent that the cost of such Contract Services or related expenses would exceed \$99,993.00. Maximum Compensation and Reimbursement for Expenses shall be based on the amounts listed in Exhibit B.

(d) **Payment Terms.** Consultant shall send invoices to the City, not more frequently than once per month, setting forth the Contract Services performed and the amount of Compensation under Section 3(a) and Reimbursement for Expenses under Section 3(b) due under this Professional Services Agreement. To be eligible for reimbursement, all expenses shall be listed individually and shall be accompanied by receipts or other applicable documentation establishing that Consultant has incurred those expenses in the course of performing under this Professional Services Agreement. All invoices are payable upon receipt by the City. The City agrees to make such payment within thirty days of receipt of the invoice. If payment is not received within thirty (30) days from the due date of such payment, Consultant may suspend further performance under one or more Work Authorizations until payments are current. The City shall notify Consultant of any disputed amount within fifteen (15) days from the date of the invoice, give reasons for the objection, and timely pay any undisputed amount. The City also agrees to accept electronic invoices for services and scanned copies of receipts and other documentation. Consultant agrees to provide the City with originals before the City is obligated to pay the invoice.

Upon receipt of each payment, the Consultant shall (1) within ten (10) calendar days pay the sub-consultant or subcontractor engaged by it and approved by the City in accordance with Section 2b, for satisfactory performance of their contract obligations and (2) within fifteen (15) calendar days submit a completed "Prompt Payment by Prime Consultant" Form together with supporting documentation to the City as verification that the Consultant has, in fact, promptly paid each sub-consultant or

subcontractor. For any delay or postponement of payments to its sub-consultants or subcontractors hereunder, the Consultant shall justify the delay or postponement by showing good cause for it or rectify the failure to pay. If the Consultant, within the fifteen (15) day period specified in (2) above, either (a) cannot verify prompt payment or (b) cannot show good cause for any delay or postponement of payment, then the City may withhold further payment to the Consultant until such time the delay in payment is rectified.

SECTION 4. Termination of Professional Services Agreement. The parties may terminate this Agreement at any time, for convenience or for cause, upon ten (10) days' written Notice to the other party. In the event that the City terminates the Agreement for convenience, then it shall pay Consultant for Contract Services satisfactorily performed by the Consultant and for all associated expenses incurred therewith prior to the termination. Under no circumstance, in the event of termination of this Professional Services Agreement, will the Consultant be entitled to recover anticipated profits or consequential damages. The provisions regarding indemnity and insurance shall survive the termination of this Professional Services Agreement.

SECTION 5. Reports and Documents.

- (a) **Property and Possession.** All model files, reports, studies, analyses, memoranda, and related data and material, as may be developed during the performance of the Contract Services, shall be submitted to and shall be the exclusive property of the City, which shall have the right to use the same for any purpose without further compensation or liability to Consultant. Consultant shall not be required to indemnify the City for any such reuse. Consultant may use its own proprietary software for the purposes of generating the data required by this Professional Services Agreement. The parties agree that the City shall retain all rights to the data generated, but that the Consultant shall retain all rights to the proprietary software.
- (b) **Status of Documents upon Expiration or Termination.** If this Professional Service Agreement expires or is terminated for any reason, including cause, all finished or unfinished documents prepared as part of the Contract Services shall immediately be transmitted to the City by Consultant, with the exception of the Consultant's proprietary software, as noted in Section 5(a).
- (c) **Confidentiality.** Consultant shall not release to any person except the City and its authorized agents any reports or related materials prepared for the City by the Consultant as the Contract Services and maintained confidentially by the City. This Professional Services Agreement, however,

does not preclude Consultant from providing any service (whether or not similar in nature to the Contract Services hereunder) in behalf of other clients in the City of Lawrence, Kansas, or elsewhere.

All model files, reports and documents prepared, assembled, or compiled by Consultant pursuant to the terms of this Professional Services Agreement are to be considered confidential and Consultant agrees that it will not, without prior written consent of the City, submit or make the same available to any individual, agency, public body, or organization other than the City and its authorized agents, except as may otherwise herein be provided.

SECTION 6. Compliance with Equal Opportunity Laws, Regulations, and Rules

- (a)** Consultant agrees that it shall comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), codified as amended at K.S.A. 44-1001 *et seq.*, and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), codified as amended at K.S.A. 44-1111 *et seq.* and shall not discriminate against any person, in the course of performing under this Professional Services Agreement, because of that person's race, religion, sex, disability, national origin, ancestry, sexual orientation, familial status, or age.
- (b)** 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 ("KHRC").
- (c)** If Consultant fails to comply with the manner in which Consultant reports to the KHRC in accordance with the provisions of K.S.A. 44-1031 and any amendment thereto, Consultant shall be deemed to have breached the present Professional Services Agreement and the City shall, in accordance with Section 5, have the right to cancel, terminate, or suspend the terms of this Professional Services Agreement, either in whole or in part.
- (d)** If Consultant is found guilty or liable for any violation of the KAAD or the KADEA by way of a final decision or order of the KHRC, then Consultant shall be deemed to have breached the present Professional Services Agreement and the City shall, in accordance with Section 5, have the right to cancel, terminate, or suspend the terms of this Professional Services Agreement, either in whole or in part.
- (e)** In any subcontract, to which the City consents in accordance with Section 2(b) of this Professional Services Agreement, Consultant agrees to include the language of Sections 6(a) through 6(d) and agrees to make such language applicable to any subcontractor hereunder.

- (f) Consultant also agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.

SECTION 7. Insurance.

- (a) **General.** Consultant shall secure and maintain, throughout the duration of this Professional Services Agreement, Insurance (on an occurrence basis unless otherwise agreed in writing) 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 days prior to cancellation of any policy listed on the certificate.
- (b) **Notice of Claim.** Consultant, upon receiving notice of any claim in connection with its performance of Contract Services under this Professional Services Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.
- (c) **Reduction of Policy Limits.** 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 this Professional Services Agreement) if the Consultant's limits of protection have been impaired or reduced to such extent that the limits fall below the minimum amounts required hereunder. In that event, Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- (d) **Insurance Required.** Consultant agrees to secure and maintain the following insurance:
 - (i) **General Liability:**
The Consultant shall maintain insurance, protecting against any and all claims and demands arising from injury to person or persons, not in the employ of the Consultant, and against any and all claims and demands resulting from damage to any property due to any act or omission of the Consultant, its agents or employees, including contractual liability, in the operation of the work or in the execution of any contract. Such insurance shall remain in effect on portions of the work which have been completed and which may or may not be

occupied or utilized by the City prior to the completion and acceptance of all the work included in the contract.

Minimum limits for Commercial General Liability insurance required are as follows:

Commercial General Liability:

- (A) Each Occurrence \$500,000
- (B) General Aggregate Combined single limit \$1,000,000
- (C) Additionally, the policy must include the following:

- (1) Broad Form Contractual\Contractually Assumed Liability;
- (2) Independent Contractors
- (3) Name the City of Lawrence, Kansas, as an additional insured.

(ii) **Automobile Liability:**

The Policy shall protect Consultant against claims for bodily injury and\or property damage arising out of the ownership or use of all owned, hired, or non-owned vehicles and must include protection for either (A) any automobile or (B) all owned automobiles, if any, and all hired and non-owned automobiles. (C) The Policy must also name the City of Lawrence, Kansas, as an additional insured.

Limits:

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

(iii) **Workers' Compensation (Statutory Limits/Employer's Liability Limits:**

Bodily Injury by Accident: \$100,000.00 each accident
Injury by Disease: \$500,000.00
Bodily Injury by Disease: \$100,000.00 each employee
If Consultant has no employees, it must execute a waiver on a form provided by the City.

(iv) **Professional Liability:**

The Consultant shall maintain through the duration of the Professional Services Agreement, Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim and aggregate and shall provide the City with certification thereof.

- (e) **Insurance Ratings.** For the purposes of this Professional Services Agreement, the City will only accept coverage from an insurance carrier that offers proof:
- (i) (A) that it is licensed to do business in the State of Kansas;
(B) that it carries a Best's policyholder rating of A- or better; and
(C) that it carries at least a Class VIII financial rating. **OR**
 - (ii) that it is a company mutually agreed upon by the City and Consultant.
- (f) **Certificate of Insurance Forms.** The parties agree that certification of insurance coverage under this Professional Services Agreement shall be on forms acceptable to the City.

SECTION 8. Indemnification.

- (a) Consultant agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, officials, employees, and agents from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, arising from or relating to Consultant's performance under this Professional Services Agreement. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence.
- (b) The City agrees to indemnify, defend, save, and hold harmless the Consultant, its officers, directors, officials, employees, and agents from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, arising from or relating to the City's performance under this Professional Services Agreement. This indemnification clause shall not apply to any injury or damage caused by Consultant's own negligence.
- (c) Neither party shall be liable to the other party for incidental, indirect, special, punitive, exemplary, or consequential damages.

SECTION 9. Quality Assurance. Consultant agrees that it shall perform its work and services under this Professional Services Agreement in accordance with recognized professional standards prevalent in the field of multimodal planning and engineering. Further, Consultant agrees that it shall perform its work and service under this Professional Services Agreement with professional expertise, skills, and knowledge of proficient industry procedures and techniques in all relevant subject matters. Consultant agrees that, accordingly, it shall be capable of performing the necessary consulting and

other services required by the City and possesses the ready comprehension of the required subject matter and the expertise to provide multimodal transportation planning and engineering for the City. Consultant's liability to the City for any non-conforming Services shall be to re-perform the non-conforming or defective Services, written notice of which must be given within a reasonable time by the City to Consultant. Consultant's obligation for re-performance of non-conforming Services, as described in the preceding sentence, shall extend for a term commencing at the substantial completion of such Services under a Work Authorization and ending one year later.

SECTION 10. Entire Agreement.

- (a) This Professional Services Agreement, which includes Appendices A-E and Exhibits A-B, represents the entire and integrated agreement between the City and Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. This Professional Services Agreement may be amended only by a written instrument signed by both the City and the Consultant. Written and signed amendments shall automatically become a part of this Professional Services Agreement and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.
- (b) No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Professional Services Agreement; and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver, modification, or amendment made in writing and signed by both parties. No evidence of notice, waiver modification, or amendment, other than evidence of such in writing, shall be introduced as evidence at any proceeding, either legal or administrative.

SECTION 11. Assignment. This Professional Services Agreement is non-assignable by the Consultant or by any subcontractor of Consultant approved by the City and KDOT in accordance with Section 2(b).

SECTION 12. Notices. All notices, demands, or other communications, which may be or are required to be given by any party to any other party under this Professional Services Agreement, shall be in writing and shall be hand-delivered, mailed by first class mail, registered or certified mail, return receipt requested, postage prepaid, or sent by overnight express mail, postage prepaid, return receipt requested, to the following addresses:

- (a) **If to Consultant:**
Jeff D. McKerrow, PE, PTOE

Olsson
1814 Main St
Kansas City, MO 64108

(b) If to the City:

City of Lawrence, Kansas
6 East 6th Street
P. O. Box 708
Lawrence, Kansas 66044
Attn: Thomas M. Markus, City Manager
Copy to: Jessica Mortinger, Transportation Planning Manager

SECTION 13. Authorizations. Each person executing this Professional Services Agreement in behalf of the City and Consultant hereby represents and warrants that he or she has the authority to bind his or her respective party hereto and that all acts requisite to confer authorization to enter into this Professional Services Agreement have been taken and completed.

SECTION 14. Independent Contractor. In no event, while performing under this Professional Services Agreement, shall Consultant be deemed to be acting as an employee of the City; rather, Consultant shall be deemed to be an independent contractor. Nothing expressed herein or implied herein shall be construed as creating between Consultant and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 15. Kansas Cash-Basis Law. This Professional Services Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.* The City, in its own behalf or in behalf of the MPO, is obligated only to make payments under this Professional Services Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Professional Services Agreement during the City's current budget year. In the event that the City does not so budget and appropriate funds, the parties acknowledge and agree that they shall be relieved of all obligations under this Professional Services Agreement without penalty. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.

SECTION 16. Conflict of Interest. Consultant is currently unaware of any conflict of interest with any party affected by this Professional Services Agreement and agrees that, if any conflict or potential conflict of interest should arise in the future, it will give notice to the City immediately.

SECTION 17. Legal Action. The parties agree that the appropriate venues for any legal actions arising out of this Professional Services Agreement are the District Court of Douglas County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.

SECTION 18. Force Majeure. Neither party shall be deemed to be at default under this Professional Services Agreement to the extent that any delay in performance results from any cause beyond its reasonable control and without its intentional act or negligence.

SECTION 19. Captions. The Captions of this Professional Services Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Professional Services Agreement or its terms.

SECTION 20. Recitals. The recitals set forth at the beginning of this Professional Services Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 21. Attachments. All attachments to this Professional Services Agreement, Appendices A-E and Exhibits A-B, are incorporated herein by reference and shall be considered to be a part of this Agreement as if set forth herein in full.

SECTION 22. Governing Law. This Professional Services Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

SECTION 23. Severability. In the event that any provision of this Professional Services Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this Professional Services Agreement to be executed as of the date noted above.

**CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation**

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

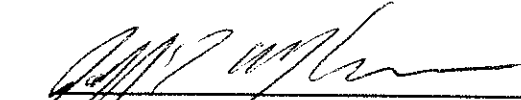
BE IT REMEMBERED, that on this ____ day of _____, 2019, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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

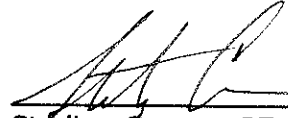
Notary Public

My Appointment Expires:

**CONSULTANT:
Olsson INC.,
a Kansas Corporation**



Jeff D. McKerrrow, PE, PTOE
Industry Expert



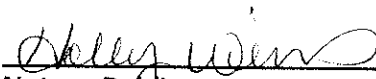
Sterling-Cramer, PE
Regional Leader

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
)
THE COUNTY OF ^{Johnson} ~~DOUGLAS~~) ss:

BE IT REMEMBERED, that on this 28th day of January, 2019, before me the undersigned, a notary public in and for the County and State aforesaid, came Jeff McKerrrow, Industry Expert, of Olsson, Inc., a Kansas corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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



Notary Public

My Appointment Expires:



Exhibit A
Scope of Services
23rd Street Multimodal Corridor Study

WORK PLAN

For us, creating a vision is a personable, manageable, strategic, and transparent process, leading to a realistic and implementable plan. To reach this goal for Lawrence, our full project approach is phased into three stages to best address the most pressing needs, while putting programming in place to make the Plan sustainable as time goes on. Our sequential process includes these steps: Discovery, Visioning and Engagement, and Implementation. The greatest focus and time will be during the visioning and engagement component. Creating a plan that addresses needs, is implementable and fundable, and most importantly, is created by your own community is how to plan for a successful project. Here's how we will help you do that.

We will uncover the 23rd Street corridor's assets and liabilities, allowing us to capitalize on opportunities and mitigate constraints in the ultimate plan. To ensure the final product is a living and breathing document, we will create a clear and concise implementation plan that details goals, objectives, strategies, and benchmarks to kickstart and measure progress.

The corridor study will focus on the segment of 23rd Street from the Haskell bridge to the east city limits. The evaluation of traffic signals will include this segment and extending further west to Iowa Street.

DISCOVERY

Before the planning process can truly begin, it is important that all parties are on the same page. With an executed contract and scope in hand, all parties will participate in a kickoff meeting to define expectations and clarify remaining uncertainties. The project work scope, schedule, and public engagement strategy will be reviewed, and all parties will leave the meeting agreeing on how to best complete the Plan on time and within budget. All successful planning efforts must be supported by a solid foundation, and the Discovery process offers the opportunity to do just that.

Following project kickoff, we will review the information provided to us by the City of Lawrence and determine any missing pieces. We will rely on the expertise of GHA to collect traffic, bicycle, pedestrian, and turning movement counts. The video data collection process provides not only counts, but also video documentation that provides tangible proof of efforts made. We anticipate traffic, pedestrian, and bicycle counts will be collected at the following intersections, and we have included these counts in our cost estimate. *These counts include 24-hour counts and counts at select intersections during a KU Basketball game*

- Iowa Street
- Ousdahl Road
- Naismith Drive
- Alabama Street

- Louisiana Street
- Massachusetts Street
- Barker Avenue
- Learnard Avenue
- Haskell Avenue
- Harper Street
- E 1600 Road

Merge Midwest will conduct travel time runs along the corridor during peak periods, expected during the morning peak period, a mid-day period, and an afternoon peak period. The team will also document the most recent available crash history along the corridor and a formal documentation of access points (private and public) along the corridor. The signalized intersections along the corridor will be analyzed with the existing traffic counts and the city-provided traffic signal timings. Opportunities for enhancements, either through revised signal timings or phasing optimizations, will be identified.

Through this process, we will develop preliminary recommendations on potential access management enhancements and whether the improvements should be proactively implemented, based on an established congestion or crash history, or passively planned as redevelopment or broader corridor improvements are made.

Data visualization tools will be used to quickly map these key datasets for the area to analyze 23rd Street in its existing state. Previous studies and available geographic information system (GIS) data will be used to document existing right-of-way and parcel boundaries, an important component as access management principals are evaluated. Proposed development plans/layouts and existing building permits will be documented to show planned or anticipated changes along the corridor. To better inform this research, we will also visit Lawrence and conduct focused group conversations with key stakeholders and the steering committee.

The community visit gives us information that cannot be gleaned from online sources. We can see firsthand existing land uses and infrastructure; development along 23rd Street; and the pedestrian, bicycle, vehicular, and transit network in its current state while we drive around the community. During this site visit, we will also conduct focused meetings with key groups that have unique information to share about the 23rd Street corridor. These conversations may include meeting with the following organizations, or others depending upon recommendations from the steering committee:

- Various city and county staff members / divisions/ commissions (Transportation Commission, Planning Commission, Sustainability Division, etc.)
- Students, faculty, and/or staff from the University of Kansas, Haskell University, and/or Lawrence High
- Members of the MPO Bicycle Advisory Committee
- Businesses and property owners along 23rd Street

- Representatives from the Lawrence VenturePark

DELIVERABLES Draft of study area findings, including a review of existing plans and current conditions analysis (to be incorporated into final plan)

MEETINGS

- One (1) kick-off meeting with the MPO
- One (1), one-day community visit and focused group conversations

VISIONING & ENGAGEMENT

The Visioning and Engagement process will take place over three days. On day one, we will work with the steering committee and key stakeholders to establish a vision for the Plan. On days two and three, we will explore potential solutions for achieving this defined vision in the planning charrette portion. *During this period, we anticipate a walking tour of the corridor from Haskell University to the east.*

Regardless of how thoroughly we invest in the existing conditions phase, there are things that cannot be learned from reading plans and analyzing data. While the Discovery process lays the foundation, the Visioning and Engagement phase is the true lifeblood of the planning process. Though others may consider visioning and public engagement to be two distinct steps in the process, we view them as being inevitably and intrinsically linked. Instead of developing concepts independently and then presenting them to the public, we believe that the public should be intimately involved in the planning process.

We understand and value the importance of genuine stakeholder and public collaboration. Without stakeholder and public buy-in, the Plan's chances of being fully realized are greatly diminished. Our experience shows us the importance of identifying and motivating these champions. They will provide invaluable guidance, encourage others to be a part of the plan development phase, and be the fire behind implementation. We will rely on the steering committee to help us identify these integral individuals.

To this end, we will use multiple venues, strategies, and portals to create meaningful dialogue and a strong alliance with the steering committee, stakeholders, and the public. This collaboration will be used to help us gather essential information related to the needs, desires, issues, and potential roadblocks that await us.

In-Person Engagement. The bulk of the Visioning and Engagement events will occur within the three-day Visioning and Planning Charrette, which will include a variety of planning activities aimed at generating goals and a direction for the Plan. We will headquarter the charrette within an easily accessible and prominent location within Lawrence. We will use preliminary information, graphics, analysis mapping, and potential planning concepts to spark discussions, establish a project vision, and gather feedback.

We believe this part of the process is the most integral to the planning process, and the part that allows us to accelerate the timeline to get to implementation faster. Because our process is highly engaging and collaborative, at the end of this three-day period, we will have a conceptual plan for 23rd Street with all the desired elements, like roadway improvements, bike accommodations, consistent sidewalks, enhanced transit stops, access management considerations, land utilizations, land use recommendations, and more. Our team of engineers, planners, and landscape architects will sketch concepts, in real-time, with key stakeholders and the steering committee alongside them. This process is extremely interactive and allows members of the public to see us work and incorporate their ideas as they share their thoughts. The product that comes from this process will have been sketched by us, but it will be your Plan through and through. This three-day event will start with a Visioning Session with key stakeholders and the steering committee. This session will result in the development of an initial vision and set of guiding principles that will inform the broader planning process and the planning charrette to immediately follow. It will include interactive exercises, facilitated small-group discussions, and review sessions with the larger group.

Immediately following the Visioning Session, we will review the themes that emerged and compare them to the internal analysis completed during the Discovery process. This information – combined with our technical expertise – will set the tone for the development of the Plan and the planning charrette activities to follow. These activities will conclude day one of the Visioning and Planning Charrette process.

With the vision established and our review complete, potential solutions for achieving this defined vision will be explored in the Visioning and Planning Charrette, which would comprise the second and third days. This will generate creative ideas and solutions for multimodal functionality, sustainability, and aesthetic enhancement along the 23rd Street corridor. The exhibits and conversations will be topical to ensure feedback is valuable and applicable. Based on the reactions received, we will begin exploring solutions for transportation users of all modes, addressing current conditions, community needs, sustainability, and more.

The planning charrette will include group progress sessions, individual stakeholder interviews, preference exercises, and ongoing planning sessions. The second day will culminate with an open house where all community members will be invited to view progress from the charrette and share their thoughts. Following the open house, we will refine the input and evaluate the preferred concepts and ideas generated and supported in the planning charrette and open house; begin to align them with the goals and objectives identified in the visioning session; and analyze how they carry forward, complement, or contradict the principles of current planning efforts.

A key benefit of the planning charrette is having all necessary experts (transit planners, city and MPO staff members, KDOT personnel, etc.) in the room at the same time. This maximizes the planning process' efficiency through on-the-fly changes. We will rely on the Steering Committee and MPO staff to help spread the word and make sure all

voices are at the table for these critical engagement activities as they define the entire project.

Once refined, the concepts and recommendations of the Plan will be presented one final time to key stakeholders and the Steering Committee in presentation format.

Online Engagement. In addition to the three-day Visioning and Planning Charrette and public meetings, we will provide regular updates – throughout the planning process – to a dedicated website or digital platform that will allow interested participants to view and provide feedback on developed information and learn how to get involved in the planning process. This can be a standalone project website or integrated with the City of Lawrence’s existing web presence. For budgetary purposes, we have assumed this will be hosted by the City of Lawrence.

We consider digital interaction and feedback to be an essential component of our engagement philosophy. Depending on the city’s preference, this online platform may incorporate a variety of engagement tools – all of which will be tailored toward furthering the reach and understanding of the planning process. Such online engagement tools will be fully integrated into the city’s website and social media platforms, allowing for a wider audience base.

It is necessary to note that community engagement does not end with the planning phase. In fact, it should continue throughout the Plan’s lifetime, ensuring that those interested stay attuned to the latest progress and are invested in the final product. This is where online engagement plays a vital role, maintaining the excitement surrounding the project.

A work session with the Transportation Committee will be conducted reporting on the progress to date.

DELIVERABLES

- Several (at least more than two) design, linkage, and multimodal solutions for 23rd Street
- Project website or content only
- Social media content (in Word document format)

MEETINGS

- One (1) visioning session and planning charrette with key stakeholders and the steering committee
- One (1) public open house to introduce the project and present ideas from the Planning Charrette (to occur during the three-day visioning and planning charrette)
- One (1) meeting with the steering committee
- *One (1) meeting with the transportation committee*

IMPLEMENTATION

This phase synthesizes all work completed into a series of actionable recommendations and implementation strategies to outline the steps that will bring the refined concept to

life. Proposed solutions will be incorporated into the final set of recommendations that address the established vision and final concept.

The recommendations will be highly illustrative, incorporating crisp graphics and imagery. Combined with a strong narrative voice, they will serve to engage the reader and tell a story. Based on our experience, this storytelling approach can be very effective in turning a complex set of recommendations (in the form of goals and policies) into a more digestible product that the average person can understand. Having a document that appeals to a broad range of readers will be vitally important if the Plan's usefulness is to extend beyond the reach of staff members.

No matter how appealing and creative the recommendations may be, they are useless without actionable strategies for implementation. Thus, we will develop a set of supporting implementation strategies in the form of an implementation matrix. The recommendation and implementation strategies will be combined to outline the necessary steps to construct the future multimodal network along 23rd Street. Any necessary geometric improvements to make this network possible and how to align this Plan with existing plans to ensure its implementation is complementary and sustainable with current efforts will also be discussed. Once formatted, a draft of the Plan will be distributed to the Steering Committee for review. A final meeting with the Steering Committee will be conducted to review the Plan prior to presentation to the City Commission. *A final presentation to the Transportation Committee is also included. An optional Open House meeting has also been included to report on the final recommendations.*

DELIVERABLES

- Final draft of 23rd Street Multimodal Corridor Plan

MEETINGS

- Steering committee meeting
- *Transportation Committee meeting*
- *Optional Public Open House*
- City commission presentation

MEETING SCHEDULE & DELIVERABLES

To maintain excellent communication and transparency throughout the project, we will come to Lawrence for monthly meetings – for a total of six in-person visits. These are in addition to the site visit and public open house.

1. Kick-Off Meeting
2. Discovery Summary and Follow-Up Meeting
3. Pre-Visioning Meeting
4. Visioning and Engagement Process
with Charrette Workshop
5. Post-Visioning Summary and Follow-Up Meeting
6. Final Meeting and Delivery of Plan Document

KANSAS DEPARTMENT OF TRANSPORTATION

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

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

Project No. R1822
 Contract No. 07-19-80-R12

07-19-80-R12 (MPO)
 Sheet 1 of 1

**REQUIRED CONTRACT PROVISION
 DBE CONTRACT GOAL**

The DBE Goal to be subcontracted to KDOT-Certified DBE firms on this contract is 10 %.

List all KDOT-Certified DBE subcontractors to be utilized. For each DBE subcontractor, identify the line item(s) of work from the Unit Prices List and the percentage of the work proposed to be subcontracted to the DBE. The DBE subcontractor must be currently certified in Kansas in order to perform work as a DBE on the contract.

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Type of Work	Percentage of work
Merge Midwest	Transportation	14.7
		%
		%
		%
		%
		%

Total KDOT-Certified DBE % 14.7

Olsson
1814 Main St.
Kansas City, MO 64108

(Prime Bidding Consultant Name and Address)

If the Percentage of Work is zero, please attach the Prime Bidding Consultant's Good Faith Effort documentation.

A list of KDOT-Certified DBEs can be found in the Directory of Disadvantaged Business Enterprises at KDOT's website: <http://kdotapp.ksdot.org/dbcontractorlist/>

07-18-80-R26
Sheet 1 of 7

REQUIRED CONTRACT PROVISION

FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES

I. INTRODUCTION.

The specific requirements for the utilization of Disadvantaged Business Enterprises, hereinafter referred to as DBEs, are set forth in this Required Contract Provision and are imposed pursuant to 49 CFR Part 26, hereinafter referred to as the regulations. This provision meets or exceeds the regulatory requirements. The regulations always take precedence over normal industry practice.

A. ASSURANCE.

The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, religion, age, disability, income status, veteran status or gender in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT 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 Kansas Department of Transportation deems appropriate.

B. DEFINITIONS.

For the purpose of this Required Contract Provision, the following words and phrases shall have the meanings as stated herein:

(1) Disadvantaged Business Enterprise (DBE) means a small business concern which is independently owned and controlled by one or more socially and economically disadvantaged individuals and which KDOT has certified as a DBE.

(2) Small business concern means a small business as defined by Section 3 of the Small Business Act and relevant regulations except that a small business concern shall not include any firms or affiliated firms owned and controlled by the same socially and economically disadvantaged individual or individuals whose value has average, annual gross receipts in excess of \$22,410,000 over the previous three fiscal years.

(3) Owned and controlled means a business:

- (a) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals, and
- (b) Whose management and daily business operations are controlled by one or more such individuals.

(4) Socially disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States, has suffered social disadvantage in education, employment, or business, and who is a(an):

- (a) Black American (a person having origins in any of the black racial groups of Africa);
- (b) Hispanic American (includes a person of Mexican, Puerto Rican, Cuban, Central or South American, or any Spanish or Portuguese culture or origin, regardless of race);
- (c) Native American (includes a person who is American Indian, Eskimo, Aleut or Native Hawaiian);
- (d) Asian-Pacific American (includes a person whose origin is from the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);

- (e) Subcontinent Asian American (includes a person whose origin is India, Pakistan, Bangladesh, Bhutan, Nepal, Sri Lanka, or the Maldives Islands);
- (f) Member of a group, or any other individual of any race or sex, found to be both economically and socially disadvantaged; or
- (g) Women.

(5) Economically disadvantaged means an individual who has a personal net worth of less than \$750,000 excluding the value of their ownership share of the applicant firm and personal residence. The individual has had diminished access to capital and credit compared to non-disadvantaged persons.

(6) Commercially useful function means the qualifying DBE owner performs manages and supervises subcontract work.

(7) Race and gender neutral measure means one that is used to assist any small business.

II. DBE CONTRACT GOALS.

A. KDOT strongly encourages all contractors to utilize DBE firms as subcontractors, suppliers, manufacturers, truckers, and brokers whenever possible and feasible. Greater voluntary participation will result in lower and fewer DBE contract goals. KDOT will set DBE contract goals only to meet the portion of its annual goal that is not met by race and gender neutral means and voluntary participation.

B. An eligible DBE is one who KDOT has certified and who is listed in the KDOT DBE directory located on the internet at: <http://www.ksdot.org/doingbusiness.asp>. KDOT also prints a paper directory quarterly, and Contractors may ask the KDOT Office of Civil Rights for a copy of the printed directory. However, as it is only published quarterly, Contractors should be aware that the printed directory may list DBE's who were decertified after the directory was printed, and these DBE's would not be considered eligible DBE's in a letting that followed decertification or when examining good faith efforts. Also, the printed directory will not list DBE's who have been certified after the directory was printed, but KDOT will consider these DBE's in a letting and when examining good faith efforts. Thus, the electronic directory controls as it is the most current information KDOT has available. Any bid proposal listing a firm that is not a KDOT certified DBE at the time of bidding will be considered nonresponsive.

C. Contractors shall, as a minimum, seek DBE firms working in the same geographic area in which they seek subcontractors for a given solicitation.

D. Contractors are required to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE firm. In order to ensure compliance with this requirement, any substitution of DBE subcontractors after the Contractor has submitted a bid to KDOT, must be approved by KDOT Office of Civil Rights. Substitutions will only be allowed for good and sufficient reasons. KDOT must receive a letter from the original DBE stating the reason for the DBE's inability to perform.

E. Contractors are also encouraged to use the services of banks owned and controlled by disadvantaged individuals.

F. When projects are State or Contractor tied, KDOT will construe DBE participation as if the tied projects are one project. To check DBE participation on tied projects the following method will be used:

(1) Add the DBE goal dollar amount for the individual tied projects. This becomes the required minimum dollar amount to be subcontracted to DBEs.

(2) If the total dollar amount actually subcontracted to DBEs on the tied contracts is equal to or greater than the minimum dollar amounts as computed above, it will be determined that the DBE goals have been met.

(3) If a State of Kansas funded project is tied to a federal aid funded project, the DBE contract goals can only be met by DBE subcontractors on the Federal Aid Project.

III. MEETING DBE CONTRACT GOAL CRITERIA.

The award of the Contract will be conditioned upon satisfaction of the requirements herein established. The apparent low bidder must either meet or exceed the DBE goals for the contract or satisfy KDOT that good faith efforts were made to meet the goals prior to the bid letting.

A. REQUIRED DBE PARTICIPATION INFORMATION.

All bidders are required to submit to KDOT with the bid proposal the DBE participation information described below on the form provided in the proposal.

(1) The names of KDOT certified DBE firms that will participate in the Contract (if none, so indicate);

(2) A description of the work each named DBE firm will perform (if none, so indicate);

(3) The actual dollar amount anticipated to be paid to each named DBE firm (if zero dollars, so indicate); except

(4) If the named DBE firm is a supplier, enter 60% of the actual dollar amount anticipated to be paid (if zero dollars, so indicate);

(5) The actual dollar amount (not to exceed 10 percent of DBE subcontract) to be paid ahead of work as DBE mobilization.

(6) For federal aid contracts with a zero DBE goal, list all subcontractors to be utilized, including DBE firms, if any.

B. GOOD FAITH DETERMINATION.

It is the bidder's responsibility to meet the DBE contract goals or to provide information to enable KDOT to determine that, prior to bidding, the bidder made good faith efforts to meet such goals.

(1) Good Faith Information Submittal. If the low bidder's required DBE information indicates that the DBE contract goals will be met, the contract will proceed toward award and the low bidder need not submit any further DBE information. Good faith documentation must be submitted within two working days of the bid opening. Example: if bids are opened on Wednesday at 2 p.m., the good faith documentation must be at KDOT Office of Civil Rights before 5 p.m. on Friday.

(2) KDOT Review. KDOT will review all information submitted to determine if the low bidder has met the DBE contract goals and, if not, whether the low bidder made sufficient good faith efforts to meet such goals. The determination of good faith efforts is made on a case-by-case basis and depends on the particular circumstances of the procurement. The issue KDOT will consider is whether the bidder took those steps, a reasonable bidder would have taken to actively and aggressively obtain DBE participation sufficient to meet the goal. A KDOT determination that the low bidder's information failed to show sufficient good faith shall be just cause for rejection of the bid. If the low bid is rejected, the above procedure will be applied to the next lowest bidder, and other bidders if necessary, until a bidder is found that meets the DBE contract goals or establishes that good faith efforts were made to meet the goal. KDOT reserves the right to reject all bids and re-advertise the Contract.

(3) Establishing Good Faith Efforts. To demonstrate good faith efforts to meet DBE contract goals, submit to KDOT documentation on the factors listed as (a) through (g). KDOT has assigned a percentage to each factor that shows the relative importance of each factor to KDOT and to the other

factors. These percentages are a guide only; the circumstances of a particular procurement may justify different percentages or consideration of factors not mentioned. In evaluating the reasonableness of the low bidder's efforts, KDOT may consider whether other bidders met the goal or failed to meet the goal. In evaluating the reasonableness of the low bidder's efforts, KDOT will consider all documentation submitted; yet, documentation created during the bidding process is more credible than documentation created after the letting.

(a) The bidder negotiated in good faith with interested DBEs. It is the bidder's responsibility to consider the available pool of certified DBEs when determining subcontract or supply needs. It is the bidder's responsibility to furnish DBEs with information about plans or specifications to facilitate the bid. Include names of DBEs considered, information given to the DBE, if any, and an explanation of why agreements could not be reached for DBEs to perform the work. (25%)

(b) The bidder selected portions of work for which KDOT has capable, certified DBE's to perform. This may include breaking out work items or subcontracting items the prime contractor normally performs. (20%)

(c) The bidder used good business judgment in rejecting a DBE quote, considering both price and capabilities. If a DBE quote represents a reasonable price for performing the work, the bidder should use that quote even though the DBE quote is higher than a non-DBE quote. However, bidders do not have to use excessive or unreasonable quotes. Before determining that a DBE quote is excessive, the bidder should inquire as to the reason for the disparity between the DBE and non-DBE quotes. The bidder should also evaluate what impact, if any, using a higher DBE price would have on the bidder's overall project bid. A higher DBE price may not be excessive or unreasonable if the price differential is a very small part of the project bid. (20%)

(d) The bidder solicited capable, certified DBEs through pre-bid meetings, advertising, telephone, mail, facsimile, e-mail, or a combination of the foregoing. The solicitation must have occurred within sufficient time to allow a DBE to respond. Follow up all initial contacts, whether the contact was solicited or unsolicited. If a DBE expresses an interest in the contract or a desire to quote and fails to submit a quote, follow up that contact, whether the contact was solicited or unsolicited. Receiving substantial unsolicited quotes may not be considered actively and aggressively pursuing DBE participation. (10%)

(e) The bidder assisted interested DBEs in obtaining equipment, supplies, or materials for the project being bid. (10%)

(f) The combinations of DBEs the bidder considered in trying to meet the goal. It is acceptable to use a portion of several DBE bids. (10%)

(g) The bidder assisted interested DBEs in obtaining bonding, credit, or insurance on the project being bid. (5%)

(4) Staff of KDOT's Office of Civil Rights and the Chief of Construction and Maintenance will review the documentation submitted and either accept or reject the good faith effort submittal.

(5) At the bidder's request, KDOT's Director of Operations will hold an informal hearing to discuss the bidder's good faith effort submittal. The bidder may have legal counsel present, at the bidder's expense. After the appeal hearing, the Director of Operations will issue the Agency's final administrative decision on whether the bidder made a good faith effort. The decision will be in writing and will explain the basis for the Agency's decision. This will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

DBE participation shall be counted toward meeting the DBE contract goals pursuant to this contract as follows:

(1) A contractor may count toward its DBE contract goals the total dollar value of a contract paid to an eligible DBE, including an approved DBE protégé.

NOTE: At the time the bid is submitted on the DBE goal sheet, list the actual amount intended to be paid to the DBE. On Form 259, submitted after award, list the same amount as in the contract line item. If this amount differs from the DBE subcontract amount, list the latter amount on the bottom of the form with an explanation.

(2) A DBE, bidding as a prime contractor, may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE prime contractor, including the cost of supplies and materials the DBE obtains. *Example: A DBE contractor bids as a prime contractor. The contract specifies a \$10,000.00 DBE goal. The DBE prime contractor performs \$50,000 of the work with its own forces. The DBE prime contractor has met the \$10,000 goal.*

(3) A contractor may count toward its DBE goals a portion of the total dollar value of a subcontract with an eligible DBE joint venture equal in proportion to the percentage of ownership and control of the DBE partner in the joint venture. *Example: A contract specifies a \$5,000.00 DBE contract goal. Prime contractor bids \$100,000.00 subcontracting with a joint venture DBE/non-DBE contractor for \$20,000.00 of the work. The percentage of ownership and control of the DBE/non-DBE joint venture is 25% DBE and 75% non-DBE. The prime contractor may count \$5,000.00 ($\$20,000.00 \times .25$; i.e. total dollar value times the percentage of DBE ownership) toward the DBE contract goal, thus fulfilling the DBE requirements of the contract.*

(4) If a non-DBE contractor and DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture.

Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$10,000.00. The DBE participant in the joint venture performs \$50,000 of the work with its own forces. The joint venture has met the \$10,000 goal. Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$100,000.00. The DBE participant in the joint venture performs \$80,000 of the work with its own forces. The joint venture must obtain the remaining \$20,000 in goal through use of another certified DBE firm, or show good faith efforts if the joint venture fails to meet the \$100,000 goal.

(5) A contractor may count toward its DBE goals 60 percent of its expenditures for materials and supplies obtained from a DBE regular dealer, and 100 percent from a DBE manufacturer. A letter must be submitted to KDOT, detailing the amount, but the amount does not count as a subcontracted percentage.

(a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.

(b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.

(6) A contractor may count toward its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

(a) The commission charged for providing a bona fide service in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract, provided the commission is reasonable and customary.

(b) The commissions charged for bonds or insurance provided by a DBE broker for the specific performance of the contract, provided the fee is reasonable and customary. A letter must be submitted detailing the amount, but does not count as a subcontracted percentage.

(7) A contractor may count toward its DBE goals the amount paid to a DBE trucker for transportation or delivery services.

(a) A DBE trucker who picks up a product at point A and delivers the product to the contractor at point B provides a delivery service. The full amount paid for this service counts toward the DBE goal.

(b) Some DBE truckers are also a regular dealer (supplier) of a bulk item. In this case, the amount paid for the material delivered will count as 60 percent toward the DBE goal. The DBE trucker is responsible for the quality of the material.

(c) For DBE truckers or suppliers to be credited toward DBE contract goals, the contractor must submit a letter to KDOT detailing all information formerly found on Form 259, prior to the start of the trucking or supply of material and requesting DBE subcontract credit.

D. COMMERCIALLY USEFUL FUNCTION.

The prime contractor is responsible for ensuring that DBE firms under subcontract to meet a DBE goal perform a commercially useful function (CUF). Failure to fulfill this obligation is a breach of contract and KDOT may invoke the sanctions listed in Section IV (Sanctions). The three criteria for a CUF are:

(1) The DBE firm shall manage the work through personal direct supervision by the DBE owner or a skilled, knowledgeable, full-time superintendent. Management includes scheduling work, ordering equipment and materials, hiring and firing employees, and submitting all required forms and reports. The DBE is not in compliance with this provision if the DBE subcontracts out part or all of the work to another entity.

(2) The DBE shall own all equipment, long term lease all equipment, or own some equipment and long term lease the remaining equipment except for specialized equipment as noted below.

(a) If the DBE leases equipment, the DBE shall have a written lease that gives the DBE full control of the equipment during the lease period. The DBE shall use its own workers to operate leased equipment.

(b) A DBE may enter into long term leases with companies operating as prime contractors. The DBE is not in compliance with this provision if the DBE leases equipment from the prime contractor on the project for that project only.

(c) Exception for specialized equipment: The DBE may lease short term specialized equipment such as a crane from another contractor or third party if this equipment is necessary for the DBE to perform its work and the equipment is of such a nature that it is not economically feasible or practical for the DBE to lease the equipment long term. The contractor shall bill the DBE for this equipment and the DBE shall pay the contractor for the equipment. The DBE is not in compliance with this provision if the contractor deducts from the DBE's pay estimate specialized equipment costs rather than submitting an invoice to and receiving payment from the DBE.

(3) The DBE shall negotiate the cost of, arrange delivery of, and pay for materials, supplies, labor, and equipment. Invoices shall be billed to the DBE and paid by the DBE.

(4) KDOT will not count towards goal or give DBE contract goal credit for the following:

- (a) Monies the prime contractor pays directly for supplies, materials, labor or equipment on the DBE's behalf except for two-party checks approved under Section III.E below.
- (b) Costs deducted from a DBE's pay estimate for supplies, materials, labor or equipment the prime contractor or its affiliate provided.
- (c) Costs incurred for equipment the DBE leases from the contractor on the project if the DBE is using the equipment for that project only and the equipment is not part of a long term lease agreement.
- (d) Costs associated with a portion of a bid item that the Agency is unable to measure clearly.
- (e) Costs incurred for work subcontracted outside normal industry practices, just to meet a goal.

(5) KDOT's determination that a DBE is not performing or did not perform a CUF is not appealable to the US Department of Transportation. KDOT's determination will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et. seq.* Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

E. BUSINESS INTEGRITY

Any person or entity will be found to be out of compliance with this required contract provision if any investigation reveals a commission or omission of any act of such serious or compelling nature that the act indicates a serious lack of business integrity or honesty. Such commission or omissions include, but are not limited to:

- (1) Violating any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a KDOT financial assistance program or,
- (2) Making, or procuring to be made, any false statement or using deceit to influence in any way any action of KDOT.

F. TWO PARTY CHECKS.

To comply with the current regulation, KDOT is implementing the following two party check procedures. The prime contractor is responsible for following the procedure and for ensuring that DBE subcontractors follow the procedure.

- (1) The DBE owner shall make the request for a two party check to the Office of Civil Rights and shall explain the benefit to the DBE firm.
- (2) The prime contractor shall send the check to the DBE owner who will endorse and forward the check to the supplier. This should be done within the 10 day prompt pay timeframe.
- (3) The amount of the check should not exceed the amount of material paid by KDOT on the latest estimate. *For example if the estimate was taken on 7/23, pay the material bill through 7/23 not through 7/31.*
- (4) Two party checks shall be issued only long enough to establish credit for the DBE firm.
- (5) KDOT will not count towards goal or give DBE contract goal credit for two party checks that have not been pre-approved by KDOT.

IV. SANCTIONS.

If KDOT finds any contractor, sub-contractor, DBE, joint venture, or mentor/protégé to be out of compliance with this required contract provision, KDOT may impose one or more of the following sanctions:

- (1) Withhold payment of progress payments until the contractor or DBE contractor complies with the payment requirements of this Special Provision.

- (2) Remove the non-complying DBE from the DBE directory until the DBE shows the company is meeting the requirements necessary to perform a CUF, including payment of all bills.
- (3) Deny goal credit as previously stated for failure to replace a non-performing DBE with another DBE (unless good faith effort was made), failure to meet the requirements necessary to perform a CUF, or failure to follow two party check procedures.
- (4) Assess and deduct as liquidated damages the monetary difference between the DBE goal amount and the amount actually paid to the DBEs for which KDOT has allowed DBE goal credit.
- (5) Reject the bidder's bid if the bidder failed to meet the DBE goal and failed to show good faith effort to meet the goal.
- (6) Refer the matter to the Office of the Attorney General, the US Department of Justice, or both for follow-up action.
- (7) Enforce all other remedies KDOT has under other contract provisions such as contract termination, contractor suspension, contractor debarment, and sanctions for failing to pay promptly.

01-26-09 OCR (DW/CDB)
Jul-09 Letting

State of Kansas
 Department of Administration
 DA-146a (Rev. 06-12)

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. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 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 the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and 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.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

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 of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Department of Transportation
Division of Engineering and Design
Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745
Ronald J. Seitz, P.E., Director

STATE OF KANSAS



GOVERNOR JEFF COLYER, M.D.
RICHARD CARLSON, SECRETARY

Phone: 785-296-2270
kdot#publicinfo@ks.gov
http://www.ksdot.org

KDOT POLICY FOR
CONSULTANT CONTRACT REIMBURSEMENT
FOR
HOTEL AND PER DIEM

Attention Contract Partners:

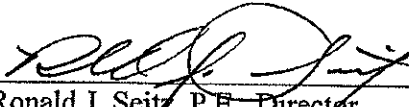
The following policy for hotels and per diem rates will be effective January 1, 2019 for contracts with consultants and sub-consultants statewide.

No out-of-state hotel bills will be reimbursed without advanced written approval (for prime and/or sub-consultant). No additional markup will be allowed on in-state (or approved out-of-state) hotel bills. The amount allowed, not including taxes, will be the actual cost up to a maximum of \$94 per night. In occasional instances when lodging cannot be secured for \$94 a night, an actual amount up to a maximum of \$141, not including taxes, will be allowed. An amount above these daily rates or unapproved out-of-state stays will not be reimbursed.

Per diem will be allowed only with overnight travel. The maximum reimbursement rate for per diem will be \$55 per day (\$8.25 for Breakfast, \$19.25 for Lunch, and \$27.50 for Dinner). Any amounts above these rates will not be reimbursed. If breakfast is furnished by the motel, the \$8.25 breakfast must be deducted. Per diem reimbursement/invoicing must be submitted with hotel receipt. Submit company's policy prior to starting work. A summary must be provided with billings recapping costs per day per individual. Please notify your sub-consultants of these rates.

Mileage will be limited to the IRS rate of \$.58/mile unless the company has audited vehicle usage rates for their company vehicles. Receipts are required for: Airport parking (limited to \$14/day); Tolls, Rental vehicles (economy class only), and Equipment Rentals. Equipment, vehicles, reproduction/printing, CADD, GPS, etc., charged as direct expense must have an audited rate to be used. Direct equipment expenses without an audited rate and "snacks" for meetings will not be allowed. Reimbursement rates may change as State and/or Federal policies change.

Thank you.



Ronald J. Seitz, P.E., Director
Division of Engineering and Design
Kansas Department of Transportation

1/10/19

Date

C: Ms. Rhonda Seitz, Chief, Bureau of Fiscal Services
Attn.: Contract Audit Section