

Supplemental No. 1 to Contract for Federal-Aid Road
Construction Engineering By City (City Administered Project)

PROJECT NO. 46 N-0373-01
STP-N037(301)
ARRA-N037(301)
STREET RECONSTRUCTION
CITY OF OVERLAND PARK, KANSAS

S U P P L E M E N T A L C O N T R A C T N o . 1

This Contract made and entered into effective the date signed by the Secretary or designee, by and between the city of Overland Park, Kansas, hereinafter referred to as the "City," and the Secretary of Transportation of the state of Kansas, hereinafter referred to as the "Secretary." Collectively referred to as the "Parties."

R E C I T A L S :

WHEREAS, the Parties entered into a Contract for Federal-Aid Road Construction Engineering By City (City Administered Project) signed by the City April 20, 2009, hereinafter referred to as the "Original Contract" for the reconstruction of College Boulevard from Pflumm Road to US-69, in the City, and

WHEREAS, the Parties mutually desire to supplement the Original Contract to add the reporting requirements in order to be eligible for the American Recovery and Reinvestment Act of 2009 (ARRA) funds on the Project.

NOW, THEREFORE, in consideration of this premise, the Parties hereto agree as follows:

1. The "INDEX OF ATTACHMENTS" be replaced in its entirety as attached to this supplemental.
2. The "REQUIRED CONTRACT PROVISIONS AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 IMPLEMENTATION OF SECTION 902 AND 1515(b)," version 04-03-09-R03, be added in its entirety as attached to this supplemental.
3. The "REQUIRED CONTRACT PROVISIONS AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 REPORTING REQUIREMENTS FOR RECOVERY ACT CONTRACTS," version 03-10-09-R05, be added in its entirety as attached to this supplemental.
4. The DOT Form No. 1589, "MONTHLY EMPLOYMENT REPORT AMERICAN RECOVERY AND REINVESTMENT ACT," be added in its entirety as attached to this supplemental.

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THIS SUPPLEMENTAL CONTRACT shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Contract, incorporated herein by reference, except as herein specifically provided.

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

ATTEST:

THE CITY OF OVERLAND PARK, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary for Engineering and
State Transportation Engineer

INDEX OF ATTACHMENTS

Special Attachment No. 1	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994
Special Attachment No. 2	Contractual Provisions Attachment
Special Attachment No. 3	Estimate of Engineering Fee
Special Attachment No. 4	Listing of KDOT Certified Inspectors
Special Attachment No. 5	Required Contract Provision Certification - Federal Funds – Lobbying
Special ARRA Attachment 03-10-09-R05	Reporting Requirements for Recovery Act Contracts
Special ARRA Attachment 04-03-09-RO3	Implementation of Section 902 and 1515(b)
Special ARRA Attachment	DOT Form No. 1589

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

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

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

a. The term Contract includes:

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

b. The term Contractor includes:

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

c. The term subcontractor includes:

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

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

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

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

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

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

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

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

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

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

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

IV. AUDITS.

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

05-12-09 C&M (CB)

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

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

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

a. The term Contractor includes:

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

b. The term subcontractor includes:

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

c. The term lower-tier subcontractor includes:

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

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

a. Entities obligated to file DOT Form 1589.

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

the Notice to Proceed date for the consulting contract, whichever occurs first. The Contractor Recipient shall end reporting on the Notice of Acceptance of Contract for the construction contract or on the date the Contractor Consultant completes all Services for the consulting contract, whichever occurs last.

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

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

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

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

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

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

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

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

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

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

d. Completing DOT Form 1589

(1) Enter the Month and Year being reported in Box 1.

(2) The Contracting Agency is the owner of the Project. Even if KDOT lets and administers the Project as the Contractor Recipient’s agent, the Contractor Recipient is the Contracting Agency and will be the entity identified in Box 2 of DOT Form 1589. If the Contractor Recipient is completing the DOT Form 1589 for its direct, on the project employees as required, the Contractor Recipient will be the Contracting Agency as well as the Contractor identified in Box 7 of DOT Form 1589.

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

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

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

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

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

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

- On KDOT-let Projects, the information is populated into the DOT Form 1589 based on the Request for Approval of Subcontractor Form 259. It is critical that Contractors submit all Form 259's needed for the Project on or before the Notice to Proceed even if those subcontractors will not be performing work at the beginning of the Project.

- On non-KDOT Let Projects, the first time the Contractor accesses the DOT Form 1589, the Contractor shall manually enter the names of all subcontractors who will be working on the Project. It is critical that the Contractor identify all subcontractors who will be working on the Project even if those subcontractors will not be performing work at the beginning of the Project.

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

e. Submitting DOT Form 1589.

All Contractors shall submit the completed on-line "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, no later than 10 calendar days after the last Saturday in the month being reported. This allows the Contractors to compile the information at the end of the last payroll period in the month being reported rather than in the middle of a payroll period. However, be sure to include in the next "MONTHLY EMPLOYMENT REPORT" any days that were not reported in the previous calendar month. Contractors may obtain a schedule of required reporting dates on KDOT's website by accessing the Economic Stimulus link at www.ksdot.org or using the link at www.ksdot.org/EconomicRecovery.asp.

Construction Contractors and Contractor Consultants shall require subcontractors and lower-tier subcontractors to submit their "MONTHLY EMPLOYMENT REPORT" (DOT Form 1589 or Like Report) within the amount of time the Construction Contractor or Contractor Consultant believes is necessary to enable that Contractor to input the data on-line and meet the 10-day submission requirement. A subcontractor's or lower-tier subcontractor's failure to timely furnish to the Contractor a "MONTHLY EMPLOYMENT REPORT" does not excuse the Contractor's obligation to complete and submit the "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, on-line within the required 10 calendar days.

III. SANCTIONS

a. For Construction Contractors: If the Construction Contractor fails to complete and submit the on-line "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, within 10 calendar days after the last Saturday in the month being reported, the Secretary or other Contractor Recipient may impose one or more of the following sanctions:

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

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

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

(4) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the "MONTHLY EMPLOYMENT REPORT" has not been submitted after the 10 calendar days allowed expire.

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

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

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

b. For Contractor Consultants: If the Contractor Consultant fails to complete and submit the on-line "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, within 10 calendar days after the last Saturday in the month being reported, the Secretary of Transportation or other Contractor Recipient may impose one or more of the following sanctions:

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

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

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

(4) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the "MONTHLY EMPLOYMENT REPORT" has not been submitted after the 10 calendar days allowed expire.

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

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

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

c. For Contractor Recipients. If a Contractor Recipient fails to complete and submit the on-line "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, within 10 calendar days after the last Saturday in the month being reported, the Secretary may impose one of the following sanctions:

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

(2) Assess damages of \$200.00 per day for every calendar day, or part thereof, that the "MONTHLY EMPLOYMENT REPORT" has not been submitted after the 10 calendar days allowed expire.

(3) Declare the Contractor Recipient in breach of contract and compile or hire a third party to compile and furnish the required information at the Contractor Recipient's expense.

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

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

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

