

CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT (the "Agreement") is made and entered into this 6th day of May, 2012 by and between the City of Overland Park, Kansas, (the "City") and BNIM Architects, (the "Consultant").

WITNESSETH:

WHEREAS, the City desires to obtain consulting services in support of a project described as:

Implementing Structured Parking in Downtown Overland Park

(hereinafter, the "Project"); and

WHEREAS, the City and the Consultant desire to enter into this Agreement setting forth the terms and conditions of their understanding as regards the consulting services for the Project.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. SCOPE OF SERVICES

The Consultant agrees to provide consulting services as set forth in Exhibit A, attached hereto and incorporated herein by reference, (the "Services").

SECTION 2. STATUS OF CONSULTANT

The Consultant is an independent contractor, and as such is not an agent or employee of the City.

SECTION 3. COMPENSATION

- A. Total Fee: The City agrees to pay the Consultant an amount not to exceed One Hundred and Twenty Two Thousand Dollars (\$122,000), including reimbursable expenses. The fee is based on the performance of the Services, and shall be billed using the cost per phase reimbursement schedule, which include both labor costs and all reimbursable expenses, as set forth in Exhibit B. All work shall be completed prior to January 1, 2014. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be agreed upon in writing by both parties.
- B. Manner of Payment: Invoices for fees may be submitted no more often than every month and are to be paid within thirty (30) days of receipt.
- C. Upon receipt of each payment, the Consultant shall (1) within ten (10) calendar days pay any sub-consultant or subcontractor engaged by it 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 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 [Prime Consultant] until such time the delay in payment is rectified.

SECTION 4. TERMINATION

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate, in whole or in part, with or without cause, the Services of the Consultant at any time, subject to written notice to the Consultant. If the City terminates the Agreement prior to completion of Services, the City shall compensate the Consultant for all Services satisfactorily completed as of the date of the Consultant's receipt of the termination notice. Compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed.

SECTION 5. SUBCONTRACTING OF SERVICES

The Consultant may subcontract portions of the Services to be performed to Nelson/Nygaard Consulting Associates or TREKK Design Group as outlined in Exhibit A, but shall not subcontract any additional Services under this Agreement without first obtaining the written approval of the City regarding the Services to be subcontracted and the person or firm proposed to accomplish the subcontracted portion of the Services.

SECTION 6. OWNERSHIP OF REPORT

The final report and all documents prepared in connection with the Services shall be the property of the City upon completion of the Services. The Consultant will have no responsibility to update its report for events and circumstances occurring after the report is accepted as final and complete by the City.

SECTION 7. INSURANCE

General: The Consultant shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. The Consultant shall provide certificates of insurance and renewals thereof on forms approved by the City.

Notice of Claim Reduction of Policy Limits: The Consultant, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The 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 Agreement) if the Consultant's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

A. Commercial General Liability

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

Name City of Overland Park as "Additional Insured".

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

Limits

Each Accident, Combined Single Limits, Bodily Injury, and Property Damage: \$500,000

Name City of Overland Park as “Additional Insured”.

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

Workers’ Compensation:	Statutory
Employer’s Liability:	
Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee

- D. Professional Liability: The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) per claim / aggregate and shall provide the City with certification thereof.

- E. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is authorized to do business in the State of Kansas;
2. Carries a Best’s policyholder rating of A- or better; and
3. Carries at least a Class VIII financial rating; or
4. Is a company mutually agreed upon by the City and the Consultant.

Certification of insurance coverage shall be on forms acceptable to the City.

- F. Subcontractor’s Insurance: The Consultant shall require each subcontractor to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein.

SECTION 8. INDEMNITY

- A. Definitions: For purposes of indemnification requirements, the following terms shall have the meaning set forth below:

1. “The Consultant” means and includes the Consultant, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
2. “Loss” means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney’s fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or

are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.

- B. Indemnity: For purposes of this Agreement, the Consultant hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Consultant. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the Consultant's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on the Consultant to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss. With respect to the City's rights as set forth herein, the Consultant expressly waives all statutory defenses, including, but not limited to, those under workers' compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of Consultant to indemnify the City.

SECTION 9. DISPUTE RESOLUTION

The City and the Consultant agree that disputes relative to the Project or the Services should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, at the City's direction, the Consultant shall proceed with the work as per this Agreement as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

SECTION 10. NON-DISCRIMINATION

- A. The Consultant agrees that:
1. During the performance of this Agreement or any subcontract resulting thereof, the Consultant, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
 2. In all solicitations or advertisements for employees the Consultant, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;
 3. If the Consultant, a subcontractor or vendor fails to comply with the manner in which the Consultant, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consultant, subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
 4. If the Consultant, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, the Consultant, subcontractor or

vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the City;

5. The Consultant shall include the provisions of paragraphs A1. through A4. above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

- B. The Consultant further agrees that the Consultant shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

- C. The Consultant further agrees to comply with the terms of the Kansas Department of Transportation documents attached to this contract as follows:
 - Exhibit C – Special Attachment No. 1
 - Exhibit E – DBE Contract Goal (07-19-80-R12)
 - Exhibit F – Utilization of Disadvantaged Businesses (07-19-80-R26)

SECTION 11. OTHER LAWS

The Consultant agrees to abide by all other federal, state or local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection with same.

SECTION 12. GENERAL PROVISIONS

- A. This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.

- B. Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

- C. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

- D. It is the intention of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

- E. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
- F. The Consultant understands that this contract may be modified or terminated due to non-availability of funds under the terms of the Subgrant Agreement between the City and the Mid America Regional Council dated the 6th day of May, 2013.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

BNIM Architects

Authorized Signatory

Title

CITY OF OVERLAND PARK, KANSAS

CARL GERLACH
MAYOR

ATTEST:

MARIAN COOK
CITY CLERK

APPROVED AS TO FORM:

STEPHEN B. HORNER
SENIOR ASSISTANT CITY ATTORNEY

Exhibit A

Scope of Services

Implementing Structured Parking in Downtown Overland Park

This document outlines the tasks and deliverables that are a part of this study, and identifies the firm or firms working on each task including the lead consultant (BNIM Architects) and the sub-consultants (Nelson/Nygaard Consulting Associates and TREKK Design Group).

PHASE ONE – DISCOVER

During the first phase of the Project, the team will gather data, conduct field surveys and evaluate the extensive work and community conversations that have occurred thus far.

- **Tasks**
 - BNIM
 - Review OP Form Based Code and Vision Metcalf Documents for Communities vision for Downtown Overland Park.
 - Review existing public input from the Vision Metcalf document and the form based code.
 - Nelson/Nygaard & Trekk
 - Conduct field surveys of parking conditions for public and private lots and on-street parking. Provide data every two hours for the lots and street parking indicated on the attached map (see Exhibit D). This would include one weekday and one Saturday when farmers market is in session.
 - Conduct a parking turnover analysis. Provide additional data on the frequency of the turnover of parking at peak times identified in the overall parking conditions analysis. Assume 2 days and 8 hours a day at two different times of the day.
 - BNIM & Nelson/Nygaard
 - Steering Committee meeting: Facilitate an initial steering committee meeting to describe the process and the possible solutions that we will be looking to create.
 - Public Engagement: Conduct a parking survey. Provide an electronic and paper survey to assess the perception of availability of parking in downtown Overland Park. The paper survey to be distributed and returned through the downtown business partnership along with the link to the electronic survey. An initial meeting with the business partnership group will discuss the survey and get their initial feedback (BNIM). Conduct up to six one-on-one interviews (15 to 20 minutes each) with community and business leaders.
 - City of Overland Park to engage the local downtown business association to help distribute survey and collect survey.
 - Trekk

- Public Engagement: Conduct a parking survey -"Person on the Street" interviews. Two days of interviews, one mid-week and one on Saturday from 11:00 am to 7:00 pm.
- **Deliverable**
 - A spreadsheet and summary report of data collected through the different forms of data collection and community engagement that charts the parking activity and the perception of parking in downtown Overland Park.

PHASE TWO – ANALYZE

During the analysis phase, the planning team will begin to analyze and synthesize all of the data and input gathered to ensure a holistic, integrated, responsive process and final product.

- **Tasks**
 - Nelson/Nygaard
 - Use survey information to identify use patterns, perceptions of the parking system and potential.
 - BNIM & Nelson/Nygaard
 - Generate a graphical, area-wide parking profile of intensity of use areas.
 - BNIM
 - Evaluate existing land use and property ownership data. Create future land development densities of low, medium and high options with the City of Overland Park staff.
 - Nelson/Nygaard
 - Use land use projections and detailed projections to conduct a parking demand analysis of the existing infrastructure. Create a spreadsheet and charts that show the projections based on three different levels of density for future development.
 - BNIM & Nelson/Nygaard
 - Hold a Steering Committee meeting.
 - Public Engagement: OP Public Official Briefing to update them on the current data and issues with downtown parking.
 - Public Engagement: Conduct Stakeholder Meeting to describe the current demand based on site observation and potential demand based on options for development density. Stakeholder feedback on demand analysis to be included in final analysis.
- **Deliverable**
 - A report of parking demand based on future density options. BNIM and the City of Overland Park will create low, medium and high density options for the downtown

district's future development. With this data we will develop detailed projections of future demand based on a full analysis of supply, user demand characteristics, municipal regulations, pricing factors and other market influences modeled using best practice approaches from the Urban Land Institute, Victoria Policy Institute, ITE and Nelson\Nygaard's extensive in-house database of national best practices. This will be in the form of a spreadsheet that can be used by the City to update the parking requirements over time as future development takes place. A map of area wide parking profile that describes intensity and turnover of parking in each lot will be provided that shows the existing use patterns.

PHASE THREE – PLAN

During Phase 3, community expectations, analysis, and emerging themes come together to inform a comprehensive parking strategy for the area.

- **Tasks**

- BNIM, Nelson/Nygaard & Development Review Committee
 - Identify locations that might be suitable for parking solutions to meet community needs including additional street parking opportunities and structured parking locations.
 - Develop schematic site plans and axonometric (or perspective) drawings to illustrate (1) general parking configuration, (2) access points and circulation, and (3) relationships between parking and private redevelopment sites.
 - Create three options for a comprehensive downtown parking strategy for review that includes a parking policy approach and locations for new parking capacity.
 - Evaluate the three parking strategy options with respect to (1) the degree to which they will incentivize redevelopment activity, (2) the degree to which they would require a significant shift in public behavior or perception, (3) the degree to which they would be able to support large public events, and (4) the degree to which they would enhance the pedestrian-oriented, placemaking efforts.
- BNIM& Development Review Committee
 - Develop site-specific alternatives for both on street and structured parking.
 - Evaluate alternatives with respect to (1) the likely cost efficiency given the site size, topography, and relationship to future redevelopment, (2) the ability of the site to provide parking to events or businesses beyond the immediately adjacent properties, (3) the ability of the site to support parking for The JO, and (4) the ability of the site to support storm water management.
 - Review alternatives with development review committee to understand feasibility of future development, cost considerations and possible incentive requirements.
- BNIM & Nelson/Nygaard

- Steering Committee Meeting(s) - Review with the steering committee the different options for parking demand strategies.
 - Public Engagement: Hold a stakeholder meeting to review and inform proposed strategies and design concepts.
- **Deliverable**
 - Three options for parking strategies in downtown Overland Park, based on a phased approach that directly relates to increasing demand and development density. We will identify plausible sites for parking solutions that build upon the analysis and recommendations in Phase 2 of this scope to develop design alternatives that illustrate how all of the pieces fit together. Our concepts will represent implementable designs in a graphic format that are informative and intuitive for the public to understand and respond to. This will include overall site plans of downtown that show possible locations of improving on street parking and policies, structured parking locations and capacities, and phasing of these concepts as it relates to density. Property analysis will ensure that designs are feasibly located along with input from real-estate professionals about the basic financing, management and private development integration. The design concepts will locate parking to support a more walkable downtown, provide new street level business fronts and connect to public transportation.

PHASE FOUR – ALIGN

During this phase, the strategy and design concepts developed in Phase 3 will be reviewed and vetted to ensure that they reflect the community’s expectations and represent a viable, implementable path to achieve the goals of the Project.

- **Tasks**
 - BNIM
 - Revise recommendations with input from previous stakeholder meetings in order to work toward a proposed set of parking approaches for growth.
 - BNIM & Nelson/Nygaard
 - Create a preferred parking approach with the Steering Committee’s input showing how the options and data support the community’s needs.
 - Hold a Steering Committee Meeting to get consensus on the final approach for the parking strategy.
 - BNIM, Nelson/Nygaard & Development Review Committee
 - Identify incentive strategies and revenue strategies for incentivizing private development and the need to meet future parking demands.
 - Create policy guidelines to assist city decision makers regarding (1) public versus private ownership of parking facilities, (2) the appropriate balance between private investment and public incentives, and (3) covering the cost of maintenance and operation of public parking facilities.

- BNIM & Nelson/Nygaard
 - Public Engagement: Hold a public workshop to review and inform proposed strategies and design concepts.
- **Deliverable**
 - During Phase 4 we will be working toward refining the parking strategies identified in Phase 3 to create a final proposed parking strategy for downtown Overland Park. During this phase, a presentation that summarizes the final parking strategy will include plans that show locations of possible on street parking additions and modifications, and structured parking locations. The presentation will also include recommendations for navigating barriers to new parking management programs, pricing, construction and operating costs, how to deploy new payment management and enforcement technologies and rolling out customer-friendly information systems.

Note: BNIM will attend an additional (fifth) Steering Committee meeting if necessary to reach a consensus on a final parking strategy. However, Nelson/Nygaard is limited to four site visits for the Project.

PHASE FIVE – IMPLEMENT

While the implementation of the downtown parking strategy will be ongoing and evolve over time as new opportunities arise, this final report will function as a springboard for policy, public investment, and private development.

- **Tasks**
 - BNIM, Nelson/Nygaard & Development Review Committee
 - Identify design guidelines for the solutions that have been previously presented.
 - Identify critical infrastructure investments.
 - Finalize financing strategies, including possible revenue options and on-going maintenance costs.
- **Deliverable**
 - A final PDF report and spreadsheet that summarizes the work done in the first four phases. Final report to have three chapters, 1 - Discover (data gathering), 2- Analyze (parking demand requirements based on different development options), 3 - Implement (plan for satisfying the parking demand through different strategies based on a development density timeline). Each chapter would include the information created in that phase along with conclusions. The report would consist of plans, charts and written text that would allow individuals not involved in the process to understand the parking strategy for downtown Overland Park and the data that informed the process.

Exhibit B
Contract Costs and Expenses

The costs for performing the work described in Exhibit A, Scope of Services, is as follows:

	BNIM	Nelson/ Nygaard	Trekk Design	Expenses	Total by Phase
Phase 1	\$7,446.50	\$12,830.00	\$8,536.00	\$1,187.50	\$30,000
Phase 2	\$6,112.50	\$12,700.00	\$0.00	\$1,187.50	\$20,000
Phase 3	\$23,472.50	\$8,340.00	\$0.00	\$1,187.50	\$33,000
Phase 4	\$13,152.50	\$9,660.00	\$0.00	\$1,187.50	\$24,000
Phase 5	\$11,640.00	\$3,360.00	\$0.00	\$0.00	\$15,000
Total by Company	\$61,824.00	\$46,890.00	\$8,536.00	\$4,750.00	
				Grand Total:	\$122,000

EXHIBIT C

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment No. 1
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

- 5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or natural origin.
- 6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with this Order.
- 9) Incorporation of Provisions: The consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

Exhibit D Parking Survey Areas

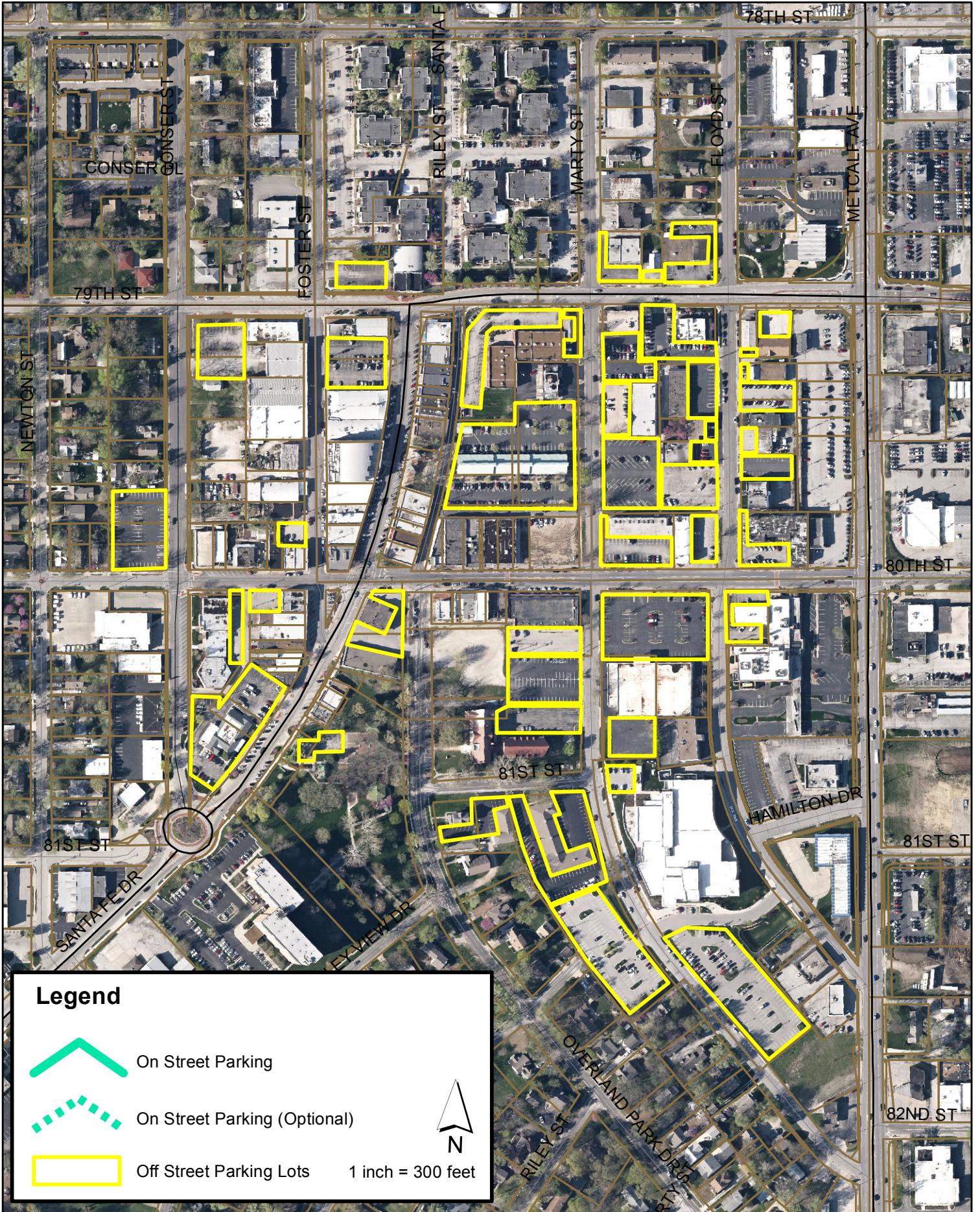


Exhibit E

Project No. _____

Contract No. _____

07-19-80-R12 (MPO)

Sheet 1 of 1

**REQUIRED CONTRACT PROVISION
DBE CONTRACT GOAL**

The total dollar goal to be subcontracted to KDOT-Certified DBE firms on this contract is \$ 7,500.00.

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 dollar value of the work to be subcontracted to the DBE.

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Type of Work	\$ Value of work
		\$
		\$
		\$
		\$
		\$
		\$

Total KDOT-Certified DBE \$ 8,536.00

BNIM Architects

106 W 14th Street, Suite 200

Kansas City, MO 64105

(Prime Bidding Consultant Name and Address)

If \$ Value of Work is zero, please attached 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://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx>

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. COMMERCIALY 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.

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