

CONSULTANT AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 20___ by and between the City of Overland Park, Kansas, (hereinafter, the "City") and Toole Design Group (hereinafter, the "Consultant").

WITNESSETH:

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

Safe Bicycle Use Outreach Project (ST-1562)

(hereinafter, the "Project"); and

WHEREAS, the City has requested that the Consultant submit an engagement letter to outline services Consultant is proposing to provide; and

WHEREAS, the City and the Consultant desire to enter into an agreement setting forth the terms and conditions of their understanding as regards the services.

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 & B attached hereto and incorporated herein by reference, (hereinafter the "Services").

SECTION 2. SUPPLEMENTAL AGREEMENTS

This Agreement may be amended to provide for additions, deletions and revisions in the Services or to modify the terms and conditions thereof by a written supplemental agreement. If notice of any change in Services affecting the general scope of the Consultant Agreement or provisions of this Agreement, including but not limited to, Agreement price or Agreement time, is a requirement of any insurance policy held by Consultant as a requirement of this Agreement, the giving of such notice shall be the Consultant's responsibility.

SECTION 3. STATUS

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

SECTION 4. COMPENSATION

- A. Total Fee excluding reimbursable expenses: City agrees to pay Consultant an amount not to exceed One Hundred Twenty-four Thousand Six Hundred Ninety-two and 58/100 Dollars (\$124,692.58), The fee is based on the performance of the Services, and shall be billed using rates and reimbursable expenses as set forth in Exhibit B. All work shall be completed on or before October 31, 2014. If any additional services beyond the Services outlined in Exhibit A are deemed to be necessary, the compensation for said services shall be outlined in a supplemental agreement as required above and shall be billed at the hourly rates set forth in Exhibit B.

- B. Reimbursable Expenses: The Consultant shall be reimbursed at the actual cost, not to exceed Twelve Thousand Five Hundred Two and 00/100 Dollars (\$12,502.00), for the following: (a) expense of transportation in connection with the Project; (b) expenses in connection with authorized out-of-town travel; (c) long-distance communications; (d) expenses of printing and reproductions; (e) postage and facsimile transmissions; (f) expenses of renderings and models requested by City, and (g) other costs as authorized by City.
- C. Manner of Payment: Invoices for fees will be submitted every four (4) weeks and are to be paid within thirty (30) days of receipt of undisputed invoice.
- D. Prompt Payment by Prime Consultants

Upon receipt of each payment, Toole Design Group, LLC shall (1) within ten (10) calendar days pay any sub-consultant or subcontractor (DBE and non-DBE), 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, found in Exhibit D, Special Attachment 1, Appendix D, together with supporting documentation to the City of Overland Park as verification that Toole Design Group, LLC has, in fact, promptly paid each sub-consultant or subcontractor. For any delay or postponement of payments to its sub-consultants or subcontractors hereunder, Toole Design Group, LLC shall justify the delay or postponement by showing good cause for it, or rectify the failure to pay. If Toole Design Group, LLC, 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 of Overland Park may withhold further payment to Toole Design Group, LLC until such time the delay in payment is rectified. Toole Design Group, LLC shall include in its contracts with sub-consultants and subcontractors (if any) the following or equivalent clause regarding prompt payment:

Within ten (10) calendar days of Toole Design Group, LLC receipt of payment from the City of Overland Park for satisfactory performance of its contract obligations, Toole Design Group, LLC shall pay Vireo Planning and Design for satisfactory performance of its subcontract obligations.

SECTION 5. TERMINATION

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

SECTION 6. SUBCONTRACTING OF SERVICES

Consultant shall not subcontract any of the Services to be performed under this Agreement without first obtaining the written approval of City regarding the Services to be subcontracted and the person or firm proposed to accomplish the subcontracted portion of the Services.

SECTION 7. 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. 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 8. INSURANCE

A. General: 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. Consultant shall provide certificates of insurance and renewals on City provided forms or on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

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

Consultant shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the certificate (or otherwise required by the 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. Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

C. Commercial General Liability

General Aggregate:	\$1,000,000
Products / Completed Operations Aggregate:	\$1,000,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

Policy must include the following:

Name City of Overland Park as "Additional Insured".

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

Limits (Same as Commercial General Liability) -
Combined Single Limits, Bodily Injury, and Property Damage - Each Accident

Policy must include the following:

Name City of Overland Park as "Additional Insured".

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

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

- F. 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) and shall provide the City with certification thereof.
- G. 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 Consultant.
- H. Subcontractor's Insurance: If a part of this Agreement is to be sublet, Consultant shall either:
 - 1. Cover all subcontractors under its insurance policies; or
 - 2. Require each subcontractor not so covered to secure insurance which will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein.

SECTION 9. INDEMNITY

- A. Definition: For purposes of indemnification requirements, the term "Loss" shall have the meaning set forth as follows:

"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 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, Consultant hereby agrees to indemnify, defend and hold harmless the City, its agents and/or employees 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, its affiliates, subsidiaries, employees, agents and subcontractors/assignees and their respective servants, agents and employees.

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 or any third party for whom the Consultant is not responsible.

In the case of any claims against the City, its employees or agents indemnified under this Agreement, by an employee of the Consultant, its affiliates, subsidiaries, or assignees, the indemnification obligation contained in this Agreement shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Consultant, its affiliates, subsidiaries, or assignees, under workers' compensation acts, disability benefit acts, or other employee benefit acts.

SECTION 10. DISPUTE RESOLUTION

City and Consultant agree that disputes relative to the Project 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 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 11. AFFIRMATIVE ACTION/OTHER LAWS

A. During the performance of this Agreement, the Consultant agrees that:

1. Consultant shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry or age;
2. in all solicitations or advertisements for employees, the Consultant shall include the phrase "equal opportunity employer" or a similar phrase approved by the Kansas Human Rights Commission ("Commission");
3. if the Consultant fails to comply with the manner in which the Consultant reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. if the Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Consultant shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
5. the Consultant shall include the provisions of Subsections 1 through 4 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

The provisions of this Section shall not apply to a contract entered into by a Consultant:

- who employs fewer than four employees during the term of such contract,
or

- whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 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 to furnish any certification required by any federal, state or local governmental agency in connection therewith.
- C. The Consultant further agrees to abide by Exhibit C, Special Attachment No. 1, Appendix A through E.

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.

SECTION 13. EXECUTION OF AGREEMENT

The parties hereto have caused this Agreement to be executed on the day and year first above written.

Toole Design Group, LLC

CITY OF OVERLAND PARK, KANSAS

Jennifer Toole
Principal

Carl Gerlach,
Mayor

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Deputy City Attorney

Scope of Services

TASK 1: Project Startup, Administration and On-going Reporting

The TDG team will begin the project with a kick-off meeting with City staff to refine the overall work plan and objectives for the Plan. This meeting will provide an opportunity to identify key stakeholders, focus groups and user groups, as well as key institutional issues that should be addressed. The kickoff meeting will serve three primary purposes:

1. Provide an opportunity for meeting participants to identify opportunities and challenges and confirm the ultimate objectives that must be accomplished through this work. This meeting will also provide an opportunity to discuss how this project should build on the 2011 Bike Route Map and other greenway linkages plans and guidelines. Starting from the objectives, the TDG team will develop a draft vision that will be presented to the public through the public involvement phase.
2. The TDG team will present the draft public outreach plan and discuss any adjustments that should be made. The team will develop a project work plan for structured public, stakeholder, and agency input, including the TDG team deliverables, to ensure successful project completion within the proposed time period. The project schedule included in this scope will serve as a starting point for this discussion. Based on the feedback of City staff, the TDG team will revise the draft project work plan and project schedule and provide a final version to City staff.
3. Allow the TDG team to understand how Overland Park prefers to handle communication and data transfer (including file types and sizes), protocols for use of ftp sites, email, and phone for project communication; and how the TDG team should request information from local agencies and initiate communications with their staff.

This task will also include initial data collection from the City and other entities. The TDG team will submit an initial data request memo and the City will be responsible for providing available data. The memo will request existing City and regional GIS data, existing plans and policies relating to bicycling in Overland Park and adjoining communities, and other documents and data.

Task 1 Deliverables

- Memo describing refined work plan, refined public involvement plan, project schedule (with milestones);
- Memo requesting existing GIS data and existing plan and policies relating to bicycling and walking; and
- Ongoing monthly progress reports.

Task 1 Meetings

- Kick-off meeting with City staff; and
- Ongoing progress update meetings and conference calls with staff

TASK 2: Develop and Implement Public and Stakeholder Involvement Strategy

The input of the public and specific stakeholder groups is critical for the success of this project. In order to solicit this input and engage different groups, the TDG team will conduct regular steering committee meetings, hold focus groups to target specific stakeholders, solicit input online through innovative mapping tools and a survey and the use of InTouch Live - an innovative public meeting survey tool. This outreach will include students, on-

street bicycle commuters, trail users, recreational riders, pedestrians, transit riders, business owners and motorists.

Kevin Luecke from TDG and Steve Rhoades from Vireo will lead regular steering committee meetings and up to two public open houses. The steering committee will include staff and stakeholders who will be instrumental in informing and implementing the final plan. Early in the project, the steering committee will work to develop a Vision, Goals and Objectives that will help guide the remainder of the project. The City will be responsible for securing meeting locations, direct communications with the Steering Committee (the TDG team will provide materials), and any official meeting notices that are required.

Public open houses will offer opportunities for attendees to provide input in a workshop-style format. A key purpose of the first open house will be to gauge the community's desires and preference for safe and comfortable bicycle facilities, and identify potential barriers to bicycling – especially by the large cohort of casual or infrequent riders who may be interested in riding more.

It will be important to the success of the plan to engage partner agencies and departments both internal and external to Overland Park. Such partners include City staff in various departments (Public Works, Planning & Development Services, Parks Services, and the Police Department), Kansas Department of Transportation, and neighboring jurisdictions. These participants will be engaged either through participation in the steering committee or through specific focus groups.

It is also important that this project reach a wide range of Overland Park bicyclists, citizens, business owners, and others to ensure that the final plan meets the needs of the community. To reach a wide audience, the TDG team will host up to six focus groups to solicit information and feedback from specific groups. Groups that may be included are local bicycle clubs, school district representatives, business owners, park and path users and others. The City is expected to assist in identifying specific groups to include in the focus groups and specific individuals within those groups as well as arranging for meeting space. Our partner Vireo has extensive experience performing public outreach work in the Kansas City region and is very familiar with the regional bike and trail networks. They will lead discussions with these groups to address their needs and build support for the plan throughout the project.

Toole Design Group has developed a web-based interactive mapping platform that is tailored specifically to bike master plans (see our demonstration site at <http://tinyurl.com/n66ku38>). This web tool is different than other commercially-available tools because it enables the user to identify and comment on corridors, in addition to points, on a map. It also enables us to post a proposed facilities map in an interactive format as well, so that community residents can zoom in to the map and comment on specific segments of the proposed master plan. All of the feedback provided can be integrated into the GIS database for the project. For the Overland Park Safe Bicycle Use Outreach Project, this sophisticated mapping tool will be used to gain valuable online input throughout the planning process, from comments on existing conditions for bicycling, to desired routes and destinations, to comments on proposed recommendations.

Task 2 Deliverables

- Content for the Project website (hosted by the City);
- Interactive web-based map (hosted by TDG);
- Web-based survey on bicycle issues and opinions (hosted by TDG); and
- Memo outlining Plan Vision, Goals and Objectives.

Task 2 Meetings

- Stakeholder focus groups (up to six);
- Public open houses (up to two); and
- Steering committee meetings (up to six).

TASK 3: Data Collection and Existing Conditions Assessment

Our investigation phase will start with a review of the 2011 Bike Route Map, and other local, regional and state plans, programs and policies that relate to bicycling in Overland Park. The TDG team will work with the City to identify and obtain existing studies, plans, maps, and data for review. We will also analyze data on the existing roadway network including road classification, traffic volumes, and congestion hotspots. Our intention is to not “reinvent the wheel” but to draw upon the conclusions and recommendations of previous studies where applicable. As part of this task, the TDG team will produce GIS-based maps of existing bicycling facilities using readily available GIS data provided by the City.

Task 3 Deliverables

- Memo describing existing plans, programs and policies relating to bicycling in Overland Park; and
- GIS-based map of existing bicycle facilities in the Overland Park area; this map will serve as base map for all other maps in the project.

TASK 4: Draft Network Development

Overland Park has excelled in the development of shared use paths within the city and now is prepared to move to the next level by expanding that system and integrating it with an on-road system creating a complete bicycle network. The TDG team will collect, compile, and analyze all data collected and develop a preliminary plan for a bicycle network. The initial network will emphasize the use of “low-stress streets” such as collectors and local streets. The TDG team will review the draft study network with the project team prior to conducting any fieldwork. The preliminary plan will identify the following details for all recommended improvements:

- Most appropriate type of bicycle facility (i.e. on-street bike lanes, shared lane markings, off-street bike paths, shared-use paths, signed bike routes) for each of the streets identified in the network. The type of facility will be based on available pavement width, available right-of-way, network function (based on stakeholder input), roadway speeds and volumes, and site specific conditions.
- Actions required to accomplish the recommended design treatment (i.e. adding pavement markings, lane narrowing or road diets, sidewalks, parking adjustments etc.). Proposed roadway cross sections may be provided where appropriate.
- Identification of spot locations where specific improvements are needed to address barriers and create a connected system (i.e. locations for new/upgraded signals, geometric improvements, bridges, transit access points, street/trail transitions etc.). This includes critical sidewalk connections for gaps in sidewalks, as well as key street crossings.
- Planning level cost estimates for the recommended network improvements. For example, for routes that include bike lanes, we will provide cost estimates based on the typical per mile cost of bike facility installation in the region.

The TDG team will emphasize the importance of implementation throughout the planning process. All of our bicycle master plans include a strong implementation component, and our firm has frequently assisted local governments in implementing particular projects or whole bicycle and pedestrian master plans. Our plans usually include a list of “Early Action” projects that are realistic for communities to implement within three years after the plan is adopted.

The TDG team will develop a map that prioritizes proposed improvements into immediate, short-, mid-, and long-term priorities. We will work with the City to develop criteria for prioritization similar to the criteria used to develop the network recommendations. The TDG team will also develop an implementation action plan for the City that identifies the parties responsible for implementing various aspects of the plan, as well as a timeframe and funding sources for implementation.

The preliminary prioritized lists of recommendations along with corresponding maps will be presented at the second public open house (see Task 2). The public will be encouraged to provide comments on overall priorities from the different categories. Staff input and public input will be used to make adjustments to the prioritized recommendations list. A final list and map of recommendations, prioritized into immediate, short-, mid-, and long-term improvements will be produced for the Plan.

Task 4 Deliverables

- Map of Bicycle Transportation Network and proposed improvement locations;
- Spreadsheet showing recommended facilities, actions, and cost estimates; and
- Prioritized lists and maps of improvement recommendations.

Task 4 Meetings

- Meetings with public, Steering Committee and Staff included under Task 2.

TASK 5: Program & Policy Recommendations

To be successful in creating a more bicycle-friendly community and increasing bicycling, this planning effort must include more than bicycle facility recommendations. This task will develop program and policy recommendations focused on the “E’s” other than Engineering (facilities): Education, Encouragement, Enforcement, and Evaluation. Attention will be given to programs that address bicyclist and motorist safety and education. Recommended encouragement and education programs will focus on the diversity of cyclists, especially in terms of skill levels and confidence in mixing with traffic, and constituencies with special needs such as children, families, seniors, disabled people, and visitors/tourists.

Task 4 Deliverables

- Memo summarizing program and policy recommendations.

TASK 6: Funding and Implementation Strategies

For successful implementation of the projects identified in Task 4 it will be important to identify realistic implementation strategies and funding sources. The TDG team has years of hands-on experience developing strategies at the local level, and is thoroughly familiar with numerous public funding sources made available at the federal and state level.

In addition to stand-alone projects, the TDG team will look for opportunities to implement projects during other capital improvements, such as striping bike lanes during road repaving, or constructing trails as a component of storm water or utility improvements.

Task 6 Deliverables

- Memo summarizing potential funding and implementation strategies.

TASK 7: Draft and Final Plan Documents

During Task 7, the TDG team will compile all previous memoranda, maps and data into a single draft report that summarizes the outcomes of the project. The report will describe the study process and will also document the public engagement that was done as a part of the project. Recommendations will be made for supporting policies and programs such as land use ordinances, safety education programs, Safe Routes to School, employer incentives, potential for bike share and other similar programs to encourage and support safe bicycling in Overland Park. Finally, the plan will contain a robust funding strategy that identifies projects from the network plan and ties them to potential sources of funding and policy strategies for implementation.

The TDG team will prepare a draft version of the Plan for review by the City staff and the project Steering Committee. The TDG team will present and solicit input on the draft Plan at the second open house as well as at meetings with other key stakeholders.

The Draft Plan Document and Maps will be revised based on all feedback and per the direction of City staff to produce the Final Plan.

The draft plan will be delivered to the City digitally. The final plan will also be delivered digitally, but will also include five (5) hard copies.

Task 7 Deliverables

- Draft Plan (digital); and
- Final Plan (digital and five hard copies).

Task 7 Meetings

- Meetings with City Staff and Steering Committee (and other boards and commissions) to review the draft plan.

**Overland Park Safe Bicycle Use Outreach Project
Toole Design Group Direct Expenses**

1 REPRODUCTION (REPORT)							
Draft Report							
8.5 x 11 Copies (Black and White)	0	Pages X	0	Copies	\$0.10	per Copy	\$0
8.5 x 11 Copies (Color)	0	Pages X	0	Copies	\$0.50	per Copy	\$0
Final Report							
8.5 x 11 Copies (Black and White)	0	Pages X	0	Copies	\$0.10	per Copy	\$0
8.5 x 11 Copies (Color)	100	Pages X	5	Copies	\$0.50	per Copy	\$250
11 x 17 Copies (Color)	10	Pages X	5	Copies	\$2.00	per Copy	\$100
Sub Total							\$350
2 REPRODUCTION (OFFICE)							
8.5 x 11 Copies (Black and White)	100	Copies/Month X	12	Months X	\$0.10	per Copy	\$120
8.5 x 11 Copies (Color)	100	Copies/Month X	12	Months X	\$0.25	per Copy	\$300
Sub Total							\$420
3 REPRODUCTION (OPEN HOUSES & MEETINGS)							
Display Posters							
0	Display Posters				\$50	per Poster	\$0
8.5 x 11 Copies (Black and White)	100	Copies/Month X	12	Months X	\$0.10	per Copy	\$120
8.5 x 11 Copies (Color)	100	Copies/Month X	12	Months X	\$0.25	per Copy	\$300
Sub Total							\$420
4 POSTAGE							
Small Packages							
1	Packages / Month X		1	Months X	\$12	per Package	\$12
Sub Total							\$12
5 TRAVEL							
Plane Ticket							
9	Trips X		1	Ticket X	\$500	per Ticket	\$4,500
Rental Car							
7	Trips X		4	Days X	\$75.00	per Day	\$525
Personal Car							
0	Trips X		0	Miles X	\$0.555	per Mile	\$0
Lodging							
24	Nights X		1	Person X	\$89	per Night	\$2,136
Breakfast							
30	Meals X				\$9	per Meal	\$270
Lunch							
33	Meals X				\$12	per Meal	\$396
Dinner							
30	Meals X				\$22	per Meal	\$660
Incidentals							
33	Days X				\$5	per Day	\$165
Sub Total							\$8,652
6 MISCELLANEOUS							
Wikimap Setup Fee							
					\$1,000		\$1,000
Sub Total							\$1,000
TOTAL							\$10,854

**Overland Park Safe Bicycle Use Outreach Project
Vireo Planning & Design Direct Expenses**

1 REPRODUCTION (REPORT)					
Draft Report					
8.5 x 11 Copies (Black and White)	<u>0</u> Pages X	<u>0</u> Copies	<u>\$0.10</u> per Copy		\$0
8.5 x 11 Copies (Color)	<u>0</u> Pages X	<u>0</u> Copies	<u>\$0.50</u> per Copy		\$0
Final Report					
8.5 x 11 Copies (Black and White)	<u>0</u> Pages X	<u>0</u> Copies	<u>\$0.10</u> per Copy		\$0
8.5 x 11 Copies (Color)	<u>0</u> Pages X	<u>0</u> Copies	<u>\$0.50</u> per Copy		\$0
11 x 17 Copies (Color)	<u>0</u> Pages X	<u>0</u> Copies	<u>\$2.00</u> per Copy		\$0
				Sub Total	\$0
2 REPRODUCTION (OFFICE)					
8.5 x 11 Copies (Black and White)	<u>50</u> Copies/Month X	<u>12</u> Months X	<u>\$0.10</u> per Copy		\$60
8.5 x 11 Copies (Color)	<u>50</u> Copies/Month X	<u>12</u> Months X	<u>\$0.25</u> per Copy		\$150
				Sub Total	\$210
3 REPRODUCTION (OPEN HOUSES & MEETINGS)					
Display Posters					
<u>20</u> Display Posters			<u>\$50</u> per Poster		\$1,000
8.5 x 11 Copies (Black and White)	<u>25</u> Copies/Month X	<u>12</u> Months X	<u>\$0.10</u> per Copy		\$30
8.5 x 11 Copies (Color)	<u>25</u> Copies/Month X	<u>12</u> Months X	<u>\$0.25</u> per Copy		\$75
				Sub Total	\$1,105
4 POSTAGE					
Small Packages					
<u>0</u> Packages / Month X	<u>0</u> Months X		<u>\$12</u> per Package		\$0
				Sub Total	\$0
5 TRAVEL					
Plane Ticket					
<u>0</u> Trips X	<u>0</u> Ticket X		<u>\$400</u> per Ticket		\$0
Rental Car					
<u>0</u> Trips X	<u>0</u> Days X		<u>\$20.00</u> per Day		\$0
Personal Car					
<u>20</u> Trips X	<u>30</u> Miles X		<u>\$0.555</u> per Mile		\$333
Lodging					
<u>0</u> Nights X	<u>0</u> Person X		<u>\$89</u> per Night		\$0
Breakfast					
<u>0</u> Meals X			<u>\$9</u> per Meal		\$0
Lunch					
<u>0</u> Meals X			<u>\$13</u> per Meal		\$0
Dinner					
<u>0</u> Meals X			<u>\$29</u> per Meal		\$0
Incidentals					
<u>0</u> Days X			<u>\$5</u> per Day		\$0
				Sub Total	\$333
6 MISCELLANEOUS					
					\$0
					\$0
				Sub Total	\$0
				TOTAL	\$1,648

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
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.

Appendix B

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 \$ _____.

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 \$ _____

(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.

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

Kansas Department of Transportation

Prompt Payment Form

Certificate of Subconsultant Work and Payment

To be completed and submitted to Local Project Sponsor within 15 days of each payment by Local Project Sponsor

(Local Project Sponsor)

(KDOT Project Number)

I certify that _____ received payment from the _____
(Prime Consultant) (Local Project Sponsor)

on _____ for Invoice Number _____ and within 10 calendar days after
(date check received)

this date, paid the subconsultants named below for the satisfactory work completed on or before the invoice "paid to date" in compliance with the Prompt Pay Provisions included in the project contract.

Subconsultant	Invoice Date	Date Paid	Amount Paid
			\$
			\$
			\$
			\$
			\$
			\$

(Date)

(Signature of Prime Consultant Representative)

(Title)

(Completed forms are to be included in the prime consultant invoice to the local project sponsor and submitted to KDOT in requests for reimbursement. Supporting documentation must be included in requests for reimbursement or otherwise attached.)

Kansas Department of Transportation DBE Payment Information

Please include in this report ALL prime and sub consultant payment information for each UPWP Consultant Activity.

MPO: _____

Information for the Quarter of: _____

UPWP Consultant Activity	Name and Address of Consultant (if selected)	Amount of Consultant/Sub consultant Contract	Status of Consultant Contract	Paid this Quarter	Cumulative Consultant Payments	Certified DBE?
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>
		\$		\$	\$	<input type="checkbox"/>

Submitted by: _____ Date: _____

Title / position: _____

*As a reminder, a DBE may not further sub consult out their work and have the amount count towards the DBE Participation Goal.
Payment amounts must be adjusted accordingly.