



**Request for Proposals for
Consultant Services**

Basehor Town Center Trail and Recreation

Planning Sustainable Places Program

Requested by the Mid-America Regional Council

February 3, 2025

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Request for Proposals

Purpose and Introduction

The Mid-America Regional Council (MARC) seeks consulting services to complete the Basehor Town Center Trail and Recreation Study for the City of Basehor, Kansas.

The PSP Program provides local governments with financial support to advance detailed local planning and project development activities in support of Creating Sustainable Places, Connected KC 2050's Activity Centers and Corridors framework, and the Mid-America Regional Council's adopted policy statement on regional land use direction. This project is one of 17 across the region chosen for funding through the Planning Sustainable Places Program.

Creating Sustainable Places Initiative

In October 2010, a consortium of more than 60 regional partners, led by the Mid-America Regional Council, received a \$4.25 million planning grant from the U.S. Department of Housing and Urban Development to advance the implementation of the Regional Plan for Sustainable Development, Creating Sustainable Places.

Creating Sustainable Places is not only a regional vision and plan to guide how we grow and develop, but a strategy for moving our communities from planning to action. This strategy includes the following steps:

- Organizing for Success – Building on the region's strong track record of collaboration to provide leadership, coordinate outreach and education activities, broaden public understanding of and involvement in sustainability issues, and strengthen stakeholder capacity to address them.
- Enhancing Decision Making – Developing new tools, policies and practices necessary to make sound investments and accelerate sustainable development.
- Demonstrating New Models – Applying these new tools to key corridors and activity centers through demonstration projects that can help transform the ways neighborhoods and communities grow and develop.

The 2013 Planning Sustainable Places Program (PSP) combined funds dedicated to the demonstration projects component of Creating Sustainable Places and the Livable Communities Surface Transportation/Bridge Program awards to provide local governments with financial support to advance detailed local planning and project development activities. The program received 37 applications and funded 18 projects.

The 2015, 2017, 2019, 2021 and 2023 Planning Sustainable Places Programs (PSP) were funded solely through the Livable Communities Surface Transportation Program and thus funding was only available to jurisdictions and other government entities within the eight

county MARC metropolitan planning organization boundary. In 2015, the program received 27 applications and funded 13 projects. In 2017, the program received 36 applications and funded 25 projects. In 2019, the program received 24 applications and funded 12 projects. In 2021, the program received 30 applications and funded 14 projects. In 2023, the program received 24 applications and funded 18 projects.

The Creating Sustainable Places Initiative and the region's long-range plan, Connected KC 2050 (CKC 2050) outline a need to focus efforts on promoting concepts consistent with sustainable communities and place a focus on advancing site specific and project specific activities in support of these objectives. Projects awarded funding will be consistent with those goals.

The 2025 Planning Sustainable Places program will continue to serve as a single local government assistance program intended to specifically respond to these goals and facilitate the following objectives:

- Support the development and implementation of local activity center plans consistent with Creating Sustainable Places principles, identified regional activity centers, and the land use policy direction outlined in Connected KC 2050.
- Support localized public engagement and community consensus building.
- Support the identification and conceptualization of land use strategies, transportation projects, and related sustainable development initiatives that help to realize and advance the objectives identified in the Creating Sustainable Places initiative, Connected KC 2050, and the MARC Board's adopted policy statement on regional land use direction.
- Support the conceptualization, development, and implementation of Creating Sustainable Places projects.

Additional information about the Planning Sustainable Places program and the Creating Sustainable Places initiative can be found on the MARC website, www.marc.org.

The focus of this request for proposals (RFP) is to create a Sustainable Places Plan that addresses the following key priorities for Basehor:

Priorities:

- **Trail Network Integration:** Establish an extensive, connected trail system within Basehor Town Center (BTC), linking to Basehor's existing downtown, Civic Campus, and the regional Metro Green Trail. This will promote active transportation options and foster connectivity throughout the city.
- **Sustainable Mixed-Use Development:** Implement a mixed-use development plan that balances commercial, residential, and recreational spaces, ensuring economic

vitality and sustainable growth. The design will include housing options for various age groups and incomes while promoting a pedestrian-friendly environment.

- **Parks and Recreational Amenities:** Develop over 40 acres of parkland and recreational spaces within BTC, responding to community requests for expanded parks. These areas will host year-round events, provide gathering spaces, and offer both indoor and outdoor recreational opportunities.
- **Community Engagement and Economic Growth:** Foster public participation to align the development with local needs while driving job creation and attracting visitors through amenities like the community center, farmers market, and future commercial ventures.
- **Shared-Use Infrastructure and Accessibility:** Plan for shared-use parking facilities to accommodate downtown and BTC visitors, improving accessibility and encouraging foot and bike traffic between the areas. Ensure that all parks, trails, and public spaces are designed to be accessible and inclusive for all ages and abilities.

Project Background

The study area is defined as the 240 acres east of 155th Street and Basehor Blvd surrounding Basehor Intermediate School. The area is highlighted in green:

The City of Basehor currently owns more than 240 acres of contiguous property. This property has been identified as an area that will reimagine the City's downtown, provide multiple living options ranging from



multi-family, senior-living, patio-style homes and traditional single family residential. Mixed-use commercial development is also proposed to be developed in this area. This area will also host amenities such as farmers markets, community center, more than 40 acres of set-aside park land and a robust trail network. As such, it is imperative that a robust planning document specific to the development of parks, amenities and trails is created to properly guide development and to ensure the construction of these items.

This project is unique in that it consists of more than 240 acres of completely undeveloped land. Many years of planning and visioning have led to an overall vision of a renewed

downtown at this location. Basehor has been consistently adding population through residential housing growth. A driving component of this is proximity and access to major employment centers such as Cerner, Kansas Speedway, Legends, American Royal, and Fort Leavenworth to name a few. The vision of “Basehor Town Center”, BTC, is to create a destination that is home to multiple living options that will cater to people in all ages and stages of life where they will be able to walk or bike to a variety of restaurants, shopping and recreational activities via a connected and ever-expanding trail network. Those living within this area will also have access to expansive park grounds which will be used for recreational and gathering opportunities. Additionally, Basehor Intermediate School is located in the center of BTC. Basehor Town Center is not only a destination for those who live within the area, but it is also a destination for all Basehor residents and visitors. The area is proposed to be home to a community center, farmer’s market, mixed-use commercial in addition to the park and trails. Basehor Town Center will be a destination that attracts visitors at times of year for shopping, recreation, festivals, art walks and more. The vision for the farmer’s market is not limited to hosting the market during the summer months, but instead this area is intended to be used year-round for many different activities which may include art galleries, outdoor retail markets, prime location for food truck vendors. The proposed community center will provide an indoor gathering area and indoor recreational opportunities.

A common request from the Citizens of Basehor has been to continue expanding the parks and recreation opportunities within the community, and BTC is a prime location to realize these opportunities. Further, the development of BTC will lead to the creation of jobs as the commercial component of the area is developed. The overarching goal of the City of Basehor is to connect the city via a trail system and the trails at BTC are no different. The trail network envisioned within BTC will be integrated throughout the developments that take place and as such, developers will be responsible for constructing portions of the trail to City standards prior to building permits being issued. This system will connect to the Metro Green Trail via a MUP along 155th Street. The Metro Green Trail ultimately connects to Civic Campus, located approximately 1.3 miles to the west. Civic Campus is home to Basehor City Hall, over one mile of trails, splash pad, amphitheater, shing pond and park. This same trail network can be used by residents from the western areas of the City to access BTC via active transportation options. Due to the location of BTC, it will become a natural extension of the existing downtown which is located directly north of BTC along 155th Street. This area of downtown is home to several small businesses, the VFW and Basehor Historical Society. Both the VFW and Basehor Historical Society regularly host events for the public which are heavily constrained due to the lack of available parking. Because of the close proximity of BTC to downtown, there is a significant opportunity to provide a shared-use parking garage that will support the existing organizations and the future commercial and recreational activities planned for BTC. The shared parking garage

will also encourage visitors to explore the existing downtown and businesses and the proposed BTC on foot or bike.

Scope of Services

Existing Conditions

The selected consultant for this project will review all relevant plans to inform the analysis and recommendations from this study. Studies to be reviewed include:

- Basehor Comprehensive Plan
- Basehor Zoning Regulations for the study area
- MetroGreen Trail Network

The existing conditions report should utilize the comprehensive plan, review proposed land uses in the study area to identify where land use and housing zoning improvements would better guide development of the study area in relation to new transportation infrastructure. Additionally, the report should include an inventory of existing conditions that provide opportunities for water recreation on the site which may include but not limited to public water access, kayaking, canoeing, fishing, etc.

Deliverables: Existing Conditions Report

Public and Stakeholder Engagement

A robust and equitable public engagement process is required to meet the needs of the projects sponsors and the requirements of the Planning Sustainable Places program. It is expected that extensive public input and a Stakeholder committee will be required for this plan. The consultant will work with the project sponsor to establish a project Steering Committee that reflects the diversity of the community and specifically includes:

- Business owners
- Private citizens
- City advocates
- USD 458 Basehor-Linwood School District
- Basehor Community Library
- VFW Post 11499
- Basehor Chamber of Commerce
- Consolidated Water District #1
- Legacy Senior Living Apartments
- Pebblebrooke Adult Living Community

To ensure public support of the plan, it is imperative that the public be a part of the planning process. The Basehor Quarterly Newsletter will be utilized to keep every household in the City informed. The consultant, project sponsor, and Steering Committee

will work together to create a public engagement plan that meets the project's needs. Although the project area is concentrated, all residents of the City of Basehor would benefit from the future town center and should be included in public outreach efforts.

The public engagement plan should include various strategies to reach as many county residents as possible. This should include, but is not limited to:

- An online project platform to host materials from presentations, meetings, updates and inform the public of ways to get involved. This should also provide a forum for public comment.
- Social media promotion of online resources, surveys, and meetings.
- Two stakeholder meetings.
- Three public meetings to introduce the project to the public, gather input and receive feedback on proposed improvements, gather feedback on final recommendations.
- Targeted outreach to residents in Environmental Justice tracts who utilize county services

Deliverables: Public engagement plan including community visioning, project website, online survey and meeting materials

Planning and Recommendations

After initial public engagement efforts and existing conditions analysis, the consultant will explore potential solutions to guide the development of the Basehor Town Center to promote accessibility, connectivity, and vibrancy. These recommendations should consider how to promote improved travel choices for walking and biking to destinations within the downtown activity center and connect downtown to the existing active transportation network. These improvements may include, but are not limited to

- Land use and housing recommendations for the study area
- Proposed amendments to the zoning regulations to support the desired vision
- Options for facilitating developer construction of proposed trails and other associated infrastructure
- Options for development of the trail system and its maintenance including permeable surfacing where appropriate to reduce runoff.
- Identify options for EV charging stations, particularly in relation to the Community Center location and adjacent activity centers.
- Identify options for bike share along the trails and near proposed EV charging that connect to activity centers including Tomahawk Park and the City's Civic Campus.
- Identify appropriate and optimal connections to the MetroGreen Trail network.
- Identify water recreation opportunities.

- Identify the best area for public parking including an option for a parking garage that would support businesses and public events. This will also include recommendations for permeable surfacing where appropriate to reduce runoff.
- Identify potential locations for a farmer’s market that also supports outdoor events.
- Provide options for 40 contiguous acres of parkland which shall include trails, bike share and may also include water recreation, playground, public space, sports courts, and other recreational opportunities.
- Identify not only standard 10’ mixed use paths but also opportunities for more rugged, natural trails to provide users with multiple trail options.
- Identify native landscaping and pollinator garden opportunities that compliment and integrate into green infrastructure. Recommendations should optimize the built/natural environment relationship.
- Identify best management practices for runoff, especially anticipated runoff from future development within the study area.
- Identify streetscape, landscaping, and green infrastructure improvements including but not limited to lighting, benches, bike stations, and waste receptacles.

Deliverables: Proposed trail network, including multiple trail types; proposed amenities including lighting, park plan; tree canopy and native landscaping including green infrastructure; parking garage recommendation; and recommendations for farmer’s market/event space.

Final Report

The final report should include a list of possible strategies and recommendations for the City of Basehor. The report should identify potential funding mechanisms and recommended strategies for implementation. This report will be presented to the Steering Committee, and the Basehor City Council.

Deliverables: Final Plan

Study Schedule

Milestone	Date
RFP Released	February 3, 2025
Pre-Bid Workshop	February 11, 2025, 3 pm CST
Questions Due	February 19, 2025, 12pm CST
Q&A Posted	February 21, 2025 EOB
Proposals Due	February 28, 2025 3pm CST
Review of Proposals	March 3 - 12, 2025
Shortlisted Firms Question Solicitation	Week of March 31, 2025
Negotiate Scope	April 7-11, 2025,
MARC Board Authorization	April 22, 2025
Execute Contract	April 23, 2025 – May 7, 2025

Notice to Proceed	Within two weeks after receipt of signed contract
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Proposal Submittal Requirements

To be eligible for consideration, one electronic copy of the response to the RFP must be received by the Mid-America Regional Council no later than 3:00 pm CST, on **February 28th, 2025**. Late submittals will not be considered and will be returned to submitter unopened. The font should not be smaller than 12 point. Covers, cover letter (single page max) and table of contents are not included in the 6-page limit. Further details regarding page counts follow:

Item	Page Requirements
1. Proposed Project Approach	Six single letter sized pages total for items 1 and 2. Two to three pages of the six must detail the public engagement process.
2. Proposed Public Engagement Strategies	
3. Qualifications	Item 3 not included in the page count for items 1 and 2. Three single sided pages or their equivalent max for narrative of qualifications. Three additional single pages total for resumes. Listing of relevant work within last 5 years not to exceed three pages. Nine pages maximum for qualifications narrative, resumes, and relevant work.
4. Disadvantaged Business Enterprise (DBE) Goal	Not included in proposal page count.
5. Affirmative Action Checklist	Not included in proposal page count.
6. Certificate Regarding Debarment	Not included in proposal page count.

Please email your submission to Beth Dawson at bdawson@marc.org and Cy Splichal at csplichal@marc.org . If you email the file it is your responsibility to ensure that the proposal has been received and not blocked by a spam filter or rejected due to file size.

To confirm receipt of the file, contact Beth Dawson at bdawson@marc.org, 816.701.8325 or Cy Splichal at csplichal@marc.org, 816.701.8231, **prior to 3:00 pm CDT, on Friday, February 28th, 2025**.

Questions should be directed to Beth Dawson at bdawson@marc.org and 816-701-8325. **DO NOT CONTACT THE CITY OF BASEHOR, KANSAS REGARDING THIS REQUEST FOR QUALIFICATIONS, YOU WILL BE DIRECTED TO BETH DAWSON.**

All questions must be in writing and received by noon CST on February 19, 2025. All questions will be posted to a Question and Answer page on the MARC website and

DemandStar (<https://network.demandstar.com/>) by close of business on February 21, 2025. A link to that page will be posted on the RFP page, <https://www.marc.org/about-marc/funding-and-rfps>.

The following items must be addressed in all proposals:

1. **PROPOSED PROJECT APPROACH:** Responses should include a proposed approach to the project that includes the proposer's understanding of the project's objectives and local context, tentative schedule for project completion, a description of your approach to each of the tasks listed in the Scope of Services section, description of all project deliverables and tentative public engagement process. Please provide your staff capacity for meeting the project requirements. Identify the key team members who are likely to be assigned to this contract if your proposal is selected along with a description of their roles and responsibilities. State approximate date your business/firm is available to begin work on the Project. Provide a list of subcontractors to be included on the consultant team, along with a brief description of their qualifications and services they are likely to perform.
2. **PROPOSED PUBLIC ENGAGEMENT STRATEGIES:** Responses should include a proposed approach to public outreach and engagement including process, meetings, tools and techniques to be utilized for engaging the community and key stakeholders in this project.
3. **QUALIFICATIONS:** Proposals should indicate general and specific qualifications of the proposer in disciplines appropriate to this project and specifically convey the role of the proposer in each case cited. An emphasis and priority in evaluation will be placed on firms with qualifications and experience that have resulted in successful implementation of comparable projects. A brief narrative (three pages maximum) may also be included regarding the firm's capabilities to carry out this project, including special assets, areas of expertise, analytical tools, data sources, etc. to which the firm may have access. Proposals shall also include:
 - a. A listing and summary of similar projects undertaken within the last five (5) years, by proposing firm and/or its subcontractors, showing contract amounts, description of work performed, client contact persons, phone numbers, and e-mail addresses (3 single pages maximum);
 - b. Resumes of key professional staff who will be assigned to this project (3 single pages maximum);
 - c. Description of the existing and anticipated workload of individuals assigned to this project during the period of this study. Any reassignment of designated key staff shall not occur without mutual consultation and the consent of the Mid-America Regional Council and the City of North Kansas City, Missouri.

- d. References. (3 – 4 including contact name, phone number and email address)
4. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL:** Studies funded in part by USDOT are required to follow 49 CFR part 26 Disadvantage Business Enterprise Program (DBE). The proposed study has a minimum DBE goal of 10%. Please state what percentage of the project will be completed by DBE.
 5. **AFFIRMATIVE ACTION CHECKLIST:** If applicable, proposers must complete and enclose with their proposal company’s Affirmative Action Plan (see Attachment B Affirmative Action Checklist). Required for all contractors, primary or sub, who have 50 or more employees. If you have 49 or less employees, then please note this requirement doesn’t apply to your firm.
 6. **CERTIFICATION REGARDING DEBARMENT:** Each proposer is required to certify by signing the “Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion” (Attachment C). “Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion” is a certification that the proposer is not on the U.S. Comptroller General’s Consolidated Lists of Persons or Firms Currently Debarred for Violations of Various Contracts Incorporating Labor Standards Provisions. Required of primary only.
 7. **CERTIFICATION REGARDING LOBBYING:** See Attachment D. Required for primary only.
 8. **BIDDER’S LIST:** See Attachment E. Required documentation for all subconsultants (accepted or not accepted).
 9. **INTENT TO PERFORM AS A DISADVANTAGE BUSINESS ENTERPRISE DBE):** See Attachment D-b on page 19.

Selection Procedure

The review committee shall adhere, as closely as possible, to the following review schedule. The sponsor reserves the sole right to change this review schedule to meet the needs of the review committee.

Milestone	Date
RFP Released	February 3, 2025
Pre-Bid Workshop	February 11, 2025, 3 pm CST
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MARC Board Authorization	April 22, 2025
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Notice to Proceed	Within two weeks after receipt of signed contract

Review will be conducted by a committee made up of representatives from Mid-America Regional Council and representatives selected by the City of Basehor, Kansas. In lieu of interviews, shortlisted firms will be asked to respond to a set of questions. The selection committee will review the responses utilizing the weighted criteria detailed in the next section, Proposal Selection Criteria.

Proposal Selection Criteria

The proposals submitted by each Contractor, Firm, or Contractor Team, will be evaluated by the selection committee according to the following criteria:

- Project approach and solutions to critical issues 15%
- Experience and availability of key personnel 15%
- Experience on similar projects 20%
- Approach to community engagement 20%
- Project understanding 15%
- Ability to accomplish project within desired timeframe 10%
- Sustainability and Environmental Stewardship 5%

Pre-Proposal Meeting and Question Submittal

MARC will host a hybrid pre-proposal meeting for all interested consultant teams to ask questions and gain clarity around any elements or requirements of this RFP.

When: Tuesday, February 11, 2025 at 3:00 pm CST

Where: Mid America Regional Council, Board Room, 600 Broadway, Ste. 200 Kansas City, Mo. 64105

[Register for Pre-Bid Workshop](#)

All questions/requests for clarifications must be submitted in writing to MARC by **February 19, 2024**, at noon CST. Please submit questions in writing to Beth Dawson at bdawson@marc.org or Cy Splichal at csplichal@marc.org. MARC will post all questions, answers and clarifications to <https://www.marc.org/about-marc/funding-and-rfps>.

Contract Award

From the firms expressing interest, a committee will review the submittals and rank the firms. Shortlisted firms will be provided with a set of questions to respond to in lieu of an interview.

The remaining firms will be notified by letter after the agreement is approved by the Board.

Awarding of the final contract is subject to the acceptance of the grant by the MARC Board and a signed funding agreement between the City of Basehor, Kansas, and MARC.

Project Budget

The award of this contract will be based on a **qualifications-based selection process** that will include responses to provided questions in lieu of an interview, followed by the successful negotiation of costs and fees. The selected firm should be prepared to provide cost and fee information within two days of their notification of selection for negotiation. If the City cannot come to an agreement with the first-choice firm on costs and fees, then the City may choose to terminate those negotiations and begin negotiations with the second firm on the scoring list or terminate all negotiations and issue another RFP for these services at a later date. The budget maximum is \$75,000.

Period of Performance – October 31, 2025

Both the project budget and the period of performance are subject to change based on the availability of funds or other unforeseen events or activities.

Attachment A – Summary of Attachments

1. Complete the AFFIRMATIVE ACTION CHECKLIST Attachment B.
2. Complete the CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION Attachment C.
3. Complete the BIDDER'S LIST Attachment D.
4. Review the GOVERNMENT SPECIAL PROVISIONS Attachment E.
 - a. KDOT Special Attachments
 - b. Required Contract Provision DBE Contract Goal – Complete and include form in proposal.
 - c. Federal Aid Contract – Utilization of Disadvantaged Businesses
 - d. Travel and Meal Policy

ATTACHMENT B – Affirmative Action Checklist

Federal regulations require that any firm of 50 or more employees soliciting an assisted federally funded contract must have an affirmative action program. If applicable, please provide a brief response to the following items that would typically be covered in any such program. You may provide a copy of your program and reference appropriate pages.

1. Date plan was adopted
2. Name of Affirmative Action Officer
3. Statement of commitment to affirmative action by the chief executive officer
4. Designation of an affirmative action officer, of assignment of specific responsibilities and to whom the officer reports.
5. Outreach recruitment
6. Job analysis and restructuring to meet affirmative action goals
7. Validation and revision of examinations, educational requirements, and any other screening requirements.
8. Upgrading and training programs
9. Internal complaint procedure
10. Initiating and insuring supervisory compliance with affirmative action program
11. Survey and analysis of entire staff by department and job classification and progress report system
12. Recruitment and promotion plans (including goals and time tables)

ATTACHMENT C – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

This Certification is required by the regulation implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98 Section 98.510, Participants’ responsibilities. The Regulations are published as Part II of the June 1985, Federal Register (pages 33, 036-33, 043)

Read instructions for Certification below prior to completing this certification.

1. The prospective proposer certifies, by submission of this proposal that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any Federal department or agency.
2. Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective proposer shall attach an explanation to this proposal.

Date

Signature – Authorized Representative

Title of Authorized Representative

Instructions for Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion:

1. By signing and submitting this agreement, the proposer is providing the certification as set below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT D – Bidder’s List

Firm name	Address	DBE or Non-DBE	NAICS for Scope	Race or Gender of majority owner		Age of firm		Annual Gross Receipts (in millions)	
					African American		1 - 3 yrs		Less than \$1
					Asian-Pacific Americans		4 - 6 yrs		\$1 - 3
					Hispanic American		7 - 10 yrs		\$3 - 6
					Native American		10+ years		\$6 - 10
					Subcontinent Asian-Pacific Americans				Over \$10
					Women				
					Other				
					Non - minority				

Firm name	Address	DBE or Non-DBE	NAICS for Scope	Race or Gender of majority owner		Age of firm		Annual Gross Receipts (in millions)	
					African American		1 - 3 yrs		Less than \$1
					Asian-Pacific Americans		4 - 6 yrs		\$1 - 3
					Hispanic American		7 - 10 yrs		\$3 - 6
					Native American		10+ years		\$6 - 10
					Subcontinent Asian-Pacific Americans				Over \$10
					Women				
					Other				
					Non - minority				

ATTACHMENT E – Government Special Provisions

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.

Project No. _____
 Contract No. _____

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

**REQUIRED CONTRACT PROVISION DBE
 CONTRACT GOAL**

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

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

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Type of Work	Percentage of work
		%
		%
		%
		%
		%
		%

Total KDOT-Certified DBE % _____

(Prime Bidding Consultant Name and Address)

If the percentage 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. COMMERCIALLY USEFUL FUNCTION.

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

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

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

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

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

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

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

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

(a) Monies the prime contractor pays directly for supplies, materials, labor or equipment on the DBE's behalf except for two-party checks approved under Section III.E below.

(b) Costs deducted from a DBE's pay estimate for supplies, materials, labor or equipment the prime contractor or its affiliate provided.

(c) Costs incurred for equipment the DBE leases from the contractor on the project if the DBE is using the equipment for that project only and the equipment is not part of a long term lease agreement.

(d) Costs associated with a portion of a bid item that the Agency is unable to measure clearly. (e) Costs incurred for work subcontracted outside normal industry practices, just to meet a goal.

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

E. BUSINESS INTEGRITY

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

(1) Violating any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a KDOT financial assistance program or,

(2) Making, or procuring to be made, any false statement or using deceit to influence in any way any action of KDOT.

F. TWO PARTY CHECKS.

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

(1) The DBE owner shall make the request for a two party check to the Office of Civil Rights and shall explain the benefit to the DBE firm.

(2) The prime contractor shall send the check to the DBE owner who will endorse and forward the check to the supplier. This should be done within the 10 day prompt pay timeframe.

(3) The amount of the check should not exceed the amount of material paid by KDOT on the latest estimate. *For example if the estimate was taken on 7/23, pay the material bill through 7/23 not through 7/31.*

(4) Two party checks shall be issued only long enough to establish credit for the DBE firm.

(5) KDOT will not count towards goal or give DBE contract goal credit for two party checks that have not been pre-approved by KDOT.

IV. SANCTIONS.

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

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

(2) Remove the non-complying DBE from the DBE directory until the DBE shows the company is meeting the requirements necessary to perform a CUF, including payment of all bills.

(3) Deny goal credit as previously stated for failure to replace a non-performing DBE with another DBE (unless good faith effort was made), failure to meet the requirements necessary to perform a CUF, or failure to follow two party check procedures.

(4) Assess and deduct as liquidated damages the monetary difference between the DBE goal amount and the amount actually paid to the DBEs for which KDOT has allowed DBE goal credit.

(5) Reject the bidder's bid if the bidder failed to meet the DBE goal and failed to show good faith effort to meet the goal.

(6) Refer the matter to the Office of the Attorney General, the US Department of Justice, or both for follow-up action.

(7) Enforce all other remedies KDOT has under other contract provisions such as contract termination, contractor suspension, contractor debarment, and sanctions for failing to pay promptly.

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

**KDOT POLICY FOR
CONSULTANT CONTRACT REIMBURSEMENT
FOR HOTEL, PER DIEM & MILEAGE**

Attention Contract Partners:

The following policy for hotels and per diem rates is effective **July 1, 2024**, for contracts with consultants and sub-consultants statewide.

*Mileage: Please refer to the mileage rate in italics further below that was effective **July 1, 2024**.*

	Daily Meals (max.)	Per Meal Allowance	Lodging before tax	
Standard rate for all				
Kansas locations including Wichita (Sedgwick County)	\$59.00	Breakfast Lunch Dinner	\$8.85 \$20.65 \$29.50	\$107.00
KC/Overland Park (includes Johnson, Wyandotte, & Leavenworth counties)	\$64.00	Breakfast Lunch Dinner	\$9.60 \$22.40 \$32.00	\$123.00

Prior to staying at a hotel with a rate exceeding the allowed hotel rates listed above, Consultant must submit a written request to the KDOT PM requesting approval for the higher rate. The requested higher rate and justification for that rate needs to be included. Please note that even with prior approval by KDOT PM, the *maximum* reimbursable lodging for the Standard Rate locations above is \$160.50 and \$184.50 for the non-Standard locations (before tax). Approvals should include CC to: KDOT.DesignContracts@ks.gov and KDOT.ConPR@ks.gov.

No out-of-state hotel bills will be reimbursed without advance written approval (for prime and/or sub-consultant).

Per diem is allowed only with overnight travel. Per diem reimbursement/invoicing must be submitted with a hotel receipt. If the hotel provides breakfast, per diem reimbursement for breakfast will not be allowed except for extenuating circumstances. Extenuating circumstance justification must be provided in writing at the time of invoice. If more than one person stays in a room, please indicate the names on the receipt. A summary must be provided with billings recapping costs per day per individual.

Please notify your sub-consultants of these rates.

Effective July 1, 2024, the Kansas Department of Administration has increased the vehicle mileage reimbursement rate to **\$0.67/mile** for automobiles. The mileage rate limited to the State of Kansas approved vehicle mileage reimbursement rate of \$0.655/mile for automobiles effective July 1, 2023, will still be used for any mileage claimed for reimbursement before July 1, 2024-unless the company

has audited vehicle usage rates for their company vehicles.

Receipts are required for Airport parking (limited to \$14/day), Tolls, Rental vehicles (economy class only), and Equipment Rentals (consultant- owned), equipment, vehicles, reproduction/printing, CADD, GPS, etc., charged as Direct Expense must have an audited rate to be used. Direct equipment expenses without an audited rate for meetings will not be allowed, neither will meals, beverages or snacks.

Please note that actual receipts are required rather than just credit card statements to the extent possible.

Reimbursement rates may change as State and/or Federal policies

change. Thank you.



Scott King, P.E., Director
Division of Engineering and Design
Kansas Department of Transportation

07/26/2024

Date

C: Ami Fulghum, Chief, Bureau of Fiscal Services