

514112151 KANSAS DEPARTMENT OF TRANSPORTATION  
I035-046 KA 3560-01 NHPP-0353(418)

CONTRACT PROPOSAL

1. The Secretary of Transportation of the State of Kansas [Secretary] will accept only electronic internet proposals from prequalified contractors for construction, improvement, reconstruction, or maintenance work in the State of Kansas, said work known as Project No.:

I035-046 KA 3560-01 NHPP-0353(418) [Project].

The general scope of the Project is:

PAVEMENT RECONSTRUCTION. LOCATION IS I-35 N OF K-7 N TO SANTA FE IN JOHNSON COUNTY. NET LENGTH IS 1.909 MILES.

2. This is the Proposal of \_\_\_\_\_ [Contractor] to complete the Project for the amount set out in the accompanying Unit Prices List.

3. The Contractor makes the following ties and riders as part of its Proposal in addition to state ties, if any:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Contractors and other interested entities may examine the Bidding Proposal Form/Contract Documents (see paragraph 11 below) at the County Clerk's Office in the County in which the Project is located and at the Kansas Department of Transportation [KDOT] Bureau of Construction and Materials, Eisenhower State Office Building, 700 SW Harrison, Topeka, Kansas 66603. Contractors may examine and print the Bidding Proposal Form/Contract Documents using KDOT's website:

<http://www.ksdot.org/burconsmain/contracts/proposal.asp>.

KDOT will not print and mail paper copies of Proposal Forms. Contractors shall notify KDOT of their intent to bid as a prime contractor by identifying themselves as a Bid Holder on the website above. Contractors shall furnish this notice no later than the close of business on the Monday preceding the scheduled Letting Date. For a fee, Contractors and other interested entities may order paper copies of the KDOT Standard Specifications for State Road and Bridge Construction, 2007 Edition, [Standard Specifications] by calling the KDOT Bureau of Construction and Materials or using KDOT's website:

<http://www.ksdot.org/burconsmain/specprov/specifications.asp>.

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5. Contractors shall use AASHTO's EXPEDITE software in combination with the electronic bidding system file created for the Project with EXPEDITE software [EBS file] to generate an electronic internet proposal. The EXPEDITE software and Project EBS file are available on Bid Express' website at <http://www.bidx.com>. The Secretary will not accept electronic paper proposals, hand-written proposals, type-written proposals, or proposals created using anything other than the EXPEDITE software.

6. Contractors shall submit an electronic internet proposal to KDOT using the Bid Express website at <http://www.bidx.com>.

7. The KDOT Bureau of Construction and Materials will only accept electronic internet proposals on-line using Bid Express until 1:00 P.M. Local Time on the Letting Date. KDOT will open and read these proposals at the Eisenhower State Office Building, 700 SW Harrison, Topeka, Kansas 66603 at 1:30 P.M. Local Time on the Letting Date. An Audio Broadcast of the Bid Letting is available at <http://www.ksdot.org/burconsmain/audio.asp>.

8. The Contractor shall execute a contract for the proposed work within ten (10) business days after notice of the award of the contract.

9. The Contractor shall complete the work within ... working days and number of cleanup days allowed by the Standard Specifications subsection 108.4 or within the time specified in Project Special Provision "Work Schedule", if applicable.

10. The Contractor shall complete the Project according to the plans, Standard Specifications, provisions identified in the Special Provision List and all other Contract Documents identified in Standard Specifications subsection 101.3.

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11. The undersigned declares that the Contractor has carefully examined the Bidding Proposal Form for the Project. The Contractor understands the following:

- \* The Bidding Proposal Form consists of the following documents: the Project EBS file on the Bid Express website (which includes DOT Form 202, required contract provisions, and the Unit Prices List), special provision list, project special provisions, special provisions, Standard Specifications, plans, exploratory work documents, any additional contract information, any addenda, and any amendments the Secretary provides for the Project. The Contractor can obtain these documents at KDOT's website at <http://www.ksdot.org/burconsmain/contracts/proposal.asp> and the links contained therein.
- \* The special provision list identifies all required contract provisions, project special provisions and special provisions that apply to the Project. The EBS file may contain provisions that do not apply to the Project. The Contractor is responsible for consulting the special provision list to determine the applicable provisions.
- \* The Bidding Proposal Form becomes the Contractor's Proposal after the Contractor completes the EBS file, electronically signs the Proposal where required on DOT Form 202, and submits the completed EBS file documents and bid bond to KDOT using Bid Express. The special provision list, project special provisions, special provisions, Standard Specifications, plans, exploratory work documents, any additional contract information, and any addenda are incorporated by reference into the Proposal. These documents are part of the Contractor's Proposal.
- \* In electronically signing this Proposal, the Contractor waives the right to claim that the Contractor misunderstood the contents of the Proposal or the procurement process.

12. The Contractor has inspected the actual location of the work. The Contractor has determined the availability of materials. The Contractor has evaluated all quantities and conditions. In electronically signing this Proposal, the Contractor waives the right to claim that the Contractor misunderstood the scope of the work.

13. SPECIAL PROVISIONS REQUIRING INFORMATION. The following Required Contract Provisions (I-XI) require the Contractor to furnish information. The current versions of these provisions are contained in the Project EBS file. Some or all of these apply to the Project as indicated in the Special Provision List. The Contractor shall complete these provisions within the EBS file. When these documents are required, the Secretary will reject proposals that fail to contain completed Provisions I, II, IV or V in the EBS file and may reject proposals that fail to contain completed Provisions III, VI, VII, VIII, IX, X or XI in the EBS file.

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- I. 08-10-66 Certification-Noncollusion & History of Debarment
- II. 04-30-82 Certification-Financial Prequalification Amount
- III. 08-04-92 Certification-Contractual Services with a Current Legislator or a Current Legislator's Firm
- IV. 04-26-90 Declaration-Limitations on Use of Federal Funds for Lobbying
- V. 07-19-80 DBE Contract Goal
- VI. 10-10-00 Price Adjustment for Fuel
- VII. 08-08-01 Furnishing and Planting Plant Materials
- VIII. 06-01-06 Price Adjustment for Asphalt Material
- IX. 05-18-07 Repair (Structures)
- X. 08-31-09 Price Adjustment for Emulsified Asphalt
- XI. 01-01-11 Kansas Department of Revenue Tax Clearance Certificate

14. The funding source for this Project is FEDERAL/STATE. On Projects involving City or County funds, the Secretary acts as the Agent of the City or County and as the administrator of federal or state funds. Each governmental entity's responsibilities are described in a contract between the entities which is available upon request.

15. FEDERAL AID DOCUMENTS INCLUDED IN PROPOSAL. If the Project is supported in whole or in part by Federal funds, the latest revisions of the following provisions (I - VI) also apply to the Project. These documents are not included in the Project EBS file but are accessible on KDOT's website and incorporated by reference into the proposal like other provisions and the exploratory work documents.

- I. 11-03-80 Affirmative Action For EEO
- II. 11-15-96 Affirmative Action & EEO Policies
- III. 09-06-94 U.S. DOT Fraud Hotline
- IV. FHWA-1273 Federal-Aid Required Contract Provisions
- V. 03-10-06 Use Of DBE As Aggregate Supplier/Regular Dealer
- VI. 07-18-80 Use Of DBE

16. The Secretary reserves the right to reject any and all proposals and to waive any or all technicalities.

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17. SIGNATURE SECTION:

A. Electronic Internet Proposal

The person submitting the electronic internet Proposal, on the Contractor's behalf, shall be the person whose digital identification is used to submit this Proposal. That person shall complete paragraphs B and C. The person whose digital identification is used to electronically sign this Proposal binds the Contractor to this Proposal and binds the named individual to the certification in paragraph B.

B. Certification

I CERTIFY THAT I AM AUTHORIZED TO REPRESENT THE CONTRACTOR IN PREPARING AND PRESENTING THIS PROPOSAL. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING (INCLUDING BUT NOT LIMITED TO THE INFORMATION CONTAINED IN THE SPECIAL PROVISIONS REFERENCED IN PARAGRAPH 13) IS TRUE AND CORRECT. EXECUTED ON \_\_\_\_\_ (DATE IN MM/DD/YYYY FORMAT).

C. Signature

Number of company or joint venture: \_\_\_\_\_

Name of company or joint venture: \_\_\_\_\_

Name of person signing: \_\_\_\_\_

Title of the person signing: \_\_\_\_\_

Signature: Electronic Internet Proposal

RELEASED FOR CONSTRUCTION:

Date: \_\_\_\_\_

Chief of Construction and Materials

*Sandra R. Sommer*

REQUIRED CONTRACT PROVISION

CERTIFICATION - NONCOLLUSION AND HISTORY OF DEBARMENT

K.A.R. 36-30-4, 49 C.F.R. 29.335, 23 U.S.C. 112(c), 49 U.S.C. 322

Complete the exceptions below if applicable. The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Certification.

NONCOLLUSION

I certify that the Contractor submitting this bid has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid.

HISTORY OF DEBARMENT

I certify that, except as noted below, the Contractor submitting this bid and any person associated with this Contractor in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or any position involving the administration of federal funds:

1. Are not currently suspended, debarred, voluntarily excluded or disqualified from bidding by any federal or state agency;
2. Have not been suspended, debarred, voluntarily excluded or disqualified from bidding by any federal or state agency within the past three years;
3. Do not have a proposed debarment pending;
4. Within the past three years, have not been convicted or had a civil judgment rendered against them by a court of competent jurisdiction in any matter involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; and
5. Are not currently indicted or otherwise criminally or civilly charged by a federal, state, or local government with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; and
6. Have not had one or more federal, state, or local government contracts terminated for cause or default within the past three years.

\_\_\_\_\_ Answer 'Yes' if there are exceptions to the above described circumstances. Answer 'No' if there are no exceptions. The exceptions, if any, are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REQUIRED CONTRACT PROVISION

CERTIFICATION - FINANCIAL PREQUALIFICATION AMOUNT

Select the appropriate response below to indicate whether this Proposal exceeds the Contractor's financial prequalification amount. The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Certification.

I understand that I may be required to identify the outstanding contract and subcontract work of my firm, association or corporation on DOT Form 284 prior to an award of contract. Unless I obtain prior approval, I understand that the Secretary may reject this Proposal if the dollar value of work on this Contract combined with unearned amounts on our unfinished contract and subcontract work exceeds our prequalification amount.

I certify that the amount of this Proposal plus the total unearned amount of other contracts with the Kansas Department of Transportation plus the unearned amount of all other contracts in this state or other states (exceeds)/(does not exceed) the financial prequalification amount of our firm, association or corporation. I also certify that our firm, association, or corporation has the financial ability to perform the work.

If this Proposal exceeds the financial prequalification amount, I certify that I obtained approval to submit this bid from the KDOT representative I have listed below. (Prior approval to exceed the prequalification limit may be made by telephone or personal contact).

KDOT Approval Granted By: \_\_\_\_\_

Date: \_\_\_\_\_

REQUIRED CONTRACT PROVISION

CERTIFICATION - CONTRACTUAL SERVICES WITH A CURRENT LEGISLATOR OR A  
CURRENT LEGISLATOR'S FIRM

Select the appropriate response below to indicate whether this contract is with a legislator or a firm in which a legislator is a member. The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Certification.

Kansas Law, K.S.A. 46-239(c), requires this agency to report all contracts entered into with any legislator or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The Contractor certifies that:

This Contract (is)/(is not) with a legislator or a firm in which a legislator is a member. If this contract is with a legislator, that legislator is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
(City) (State) (Zip Code)

Business Telephone: \_\_\_\_\_



REQUIRED CONTRACT PROVISION

DECLARATION  
LIMITATIONS ON USE OF FEDERAL FUNDS FOR LOBBYING  
PURSUANT TO 31 U.S.C. 1352

The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Declaration and the certifications contained therein.

DEFINITIONS:

1. Designated Entity: an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.
2. Federal Grant: An award of financial assistance by the Federal government. (Federal Aid Highway Program is considered a grant program.)
3. Influencing (or attempt): making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of a Federal contract or Federal grant.
4. Person: An individual, corporation, company, association, authority, firm, partnership, society, State, or local government.
5. Recipient: All contractors, subcontractors, subgrantees, at any tier, and other persons receiving funds in connection with a Federal grant.

EXPLANATION:

As of December 23, 1989, 31 U.S.C. section 1352 limits the use of appropriated Federal funds to influence Federal contracting. Under this law, recipients of Federal grants shall not use appropriated funds to pay any person for influencing or attempting to influence a designated entity in connection with the making of a Federal grant or the extension, continuation, renewal, amendment or modification of a Federal grant. These restrictions apply to contracts and grants exceeding \$100,000.00. Federal law requires submission of this declaration. If a recipient fails to file the declaration or amend a declaration, the recipient shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure. If the recipient uses appropriated Federal funds to influence or to attempt to influence a designated entity contrary to this provision, the recipient shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such payment.

CERTIFICATIONS:

I certify that the Contractor recipient (including its owners, partners, directors, officers, or principals) has not paid and will not pay federally appropriated funds to any person for influencing or attempting to influence a designated entity in connection with the making of a Federal grant, or the extension, continuation, renewal, amendment or modification of a Federal grant.

\_\_\_\_\_ Answer 'Yes' if a person registered under the Lobbying Disclosure Act of 1995 (Registrant) has made lobbying contacts on the Contractor recipient's behalf with respect to this contract. Answer 'No' if no Registrant has lobbied on the Contractor recipient's behalf with respect to this contract. The Registrants, if any, are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I certify that the Contractor recipient will report payments made to a person for influencing or attempting to influence a designated entity, that come from funds other than appropriated Federal funds. The Contractor recipient shall report such payments on Form LLL "DISCLOSURE FORM TO REPORT LOBBYING" according to the instructions and may obtain Form LLL from the KDOT Bureau of Construction and Materials.

I certify that, if information contained in this DECLARATION changes, the Contractor recipient will amend the DECLARATION within 30 days of the change(s).

I certify that the Contractor recipient will provide to and require subcontractors to sign a like DECLARATION, if the subcontract work exceeds \$100,000.

The Contractor recipient understands that this declaration is a material representation of fact and the Secretary will have relied upon this declaration in entering into a contract with the Contractor recipient.

NOTE: This Reporting requirement does not apply to payments made to the recipient's regular employees and contracts, subcontracts, and grants less than \$100,000.

REQUIRED CONTRACT PROVISION  
FURNISHING AND PLANTING PLANT MATERIALS

\_\_\_\_\_ Answer 'Yes' if this provision applies to this Project. Answer 'No' if this provision does not apply.

The Contractor shall comply with Section 907 of the Standard Specifications when furnishing and planting plant materials. Add the following at the end of 907.4 Measurement and Payment.

If the Proposal requires a lump sum price for the bid item "Furnishing and planting plant materials", the Contractor will submit a lump sum price in the Unit Prices List for all plant materials the contract requires. The Contractor will also submit a unit cost in this special provision on the "Plant Material Unit Cost List" below for each plant material the contract requires. Even though the bid item is a lump sum price, the Engineer will adjust the lump sum price by any increases or decreases in the quantities shown in the Summary of Quantities. To calculate the adjustment, the Engineer will determine the overrun or underrun quantity for each plant material. The Engineer will multiply any overrun or underrun quantity by the unit cost the Contractor furnished below. The Engineer will increase the lump sum price by the cost of any overruns and decrease the lump sum price by the cost of any underruns. The Engineer will only negotiate or receive new prices on plant materials if such materials were not identified in the original Summary of Quantities.

The Secretary may reject this Proposal if the Contractor fails to complete the "Plant Material Unit Cost List" and fails to submit this special provision with its Proposal.

Plant Material Unit Cost List

I.D. Number *	Unit Cost	I.D. Number *	Unit Cost	I.D. Number *	Unit Cost

\*Refer to the Summary of Quantities sheet in the Plans for the I.D. Number

REQUIRED CONTRACT PROVISION  
 REPAIR (STRUCTURES)

\_\_\_\_\_ Answer 'Yes' if this provision applies to this Project. Answer 'No' if this provision does not apply.

For this Project, the structure repairs will comply with SECTION 727. Add the following at the end of subsection 727.4 Measurement and Payment.

If the Proposal requires a lump sum price for the bid item "Bridge Repair", submit a lump sum price in the Unit Prices List for all bridge repairs the contract requires. The Contractor will also submit a unit cost in this required contract provision on the "Bridge Repair Unit Cost List" below for each bridge repair item the contract requires. Even though the bid item is a lump sum price, the Engineer will adjust the lump sum price by any increases or decreases in the quantities shown in the Summary of Quantities. To calculate the adjustment, the Engineer will determine the overrun or underrun quantity for each bridge repair item. The Engineer will multiply any overrun or underrun quantity by the unit cost the Contractor furnished below. The Engineer will increase the lump sum price by the cost of any overruns and decrease the lump sum price by the cost of any underruns. The Engineer will only negotiate or receive new prices on bridge repair if such items were not identified in the original Summary of Quantities.

The Secretary may reject this Proposal if the Contractor fails to complete the "Bridge Repair Unit Cost List" and fails to submit this provision with the Proposal.

Bridge Repair Unit Cost List

I.D.Number	Unit Cost	I.D.Number	Unit Cost	I.D.Number	Unit Cost
*		*		*	

\*Refer to the Summary of Quantities sheet in the Plans for the I.D. Number

REQUIRED CONTRACT PROVISION  
 PRICE ADJUSTMENT FOR FUEL

\_\_\_\_\_ Answer 'Yes' if this provision applies to the Project and you accept this provision. Answer 'No' if this provision does not apply. Answer 'Reject' if this provision applies to the Project, but you reject this provision and the provision will not be part of the contract.

The Contractor may accept or reject the application of Special Provision 07-01008 (latest revision) "Price Adjustment for Fuel". This Required Contract Provision 10-10-00 identifies the items of work on this Project that KDOT has determined are eligible for a fuel price adjustment.

If the Contractor accepts 07-01008 (latest revision), the Contractor shall select 'Yes' in the box(es) below next to those eligible items for which the Contractor desires a fuel price adjustment and select 'No' in the box(es) below next to those eligible items for which the Contractor does not desire a fuel price adjustment.

Eligible Item of Work	Indicate 'Yes' or 'No' for each eligible Item	Description of Eligible Item of Work
X		Common Excavation
X		Common Excavation (Contractor Furnished)
X		Rock Excavation
		Rock Excavation (Non-Durable Shale)
		Unclassified Excavation
		Embankment
		Embankment (Contractor Furnished)
		Concrete Placement
		Bonded Concrete Pavement
X		Concrete Pavement
		Cold Recycled Asphalt Material
		Surface Recycled Asphalt Construction
		HMA - Construction
X		HMA - Commercial Grade

The Contractor assumes the risk of any mistakes the Contractor makes in completing the table.

REQUIRED CONTRACT PROVISION  
PRICE ADJUSTMENT FOR ASPHALT MATERIAL

\_\_\_\_\_ Answer 'Yes' if this provision applies to the Project and you accept this provision. Answer 'No' if this provision does not apply. Answer 'Reject' if this provision applies to the Project, but you reject this provision and the provision will not be part of the contract.

The Contractor may accept or reject the application of Special Provision 07-01009 (latest revision) "Price Adjustment for Asphalt Material."

REQUIRED CONTRACT PROVISION  
PRICE ADJUSTMENT FOR EMULSIFIED ASPHALT

\_\_\_\_\_ Answer 'Yes' if this provision applies to the Project and you accept this provision. Answer 'No' if this provision does not apply. Answer 'Reject' if this provision applies to the Project, but you reject this provision and the provision will not be part of the contract.

The Contractor may accept or reject the application of Special Provision 07-01016 (latest revision) "Price Adjustment for Emulsified Asphalt".

REQUIRED CONTRACT PROVISION  
TAX CLEARANCE CERTIFICATE

\_\_\_ Answer 'Yes' if the Contractor has a current Tax Clearance Certificate.  
Answer 'No' if the Contractor does not have a current Tax Clearance Certificate. Insert the Tax Clearance Confirmation Number if available at the time of bidding:\_\_\_\_\_

Contractors shall have a current Tax Clearance Certificate from the Kansas Department of Revenue [KDOR] at the time of contract award. The Tax Clearance process is a tax account review by KDOR to determine that the Contractor's account is compliant with Kansas tax laws administered by the Director of Taxation. The Secretary will reject the Contractor's Proposal as non-responsive if the Contractor does not have a current Tax Clearance Certificate at the time of contract award.

To obtain a Tax Clearance Certificate, the Contractor shall complete and submit to KDOR an Application for Tax Clearance obtained from KDOR's website at <http://www.ksrevenue.org/taxclearance.htm>. The Application Form can be completed and submitted on-line, by mail, or by fax. After the Contractor submits the Application, KDOR will provide the Contractor a Transaction ID number. The Contractor shall use the Transaction ID number to retrieve the Tax Clearance Certificate. Decisions on on-line applications are generally available the following business day.

After the Contractor obtains the Tax Clearance Certificate, the Contractor shall insert on this Required Contract Provision the Confirmation Number contained in the Certificate or the Contractor shall submit a copy of the Tax Clearance Certificate to the KDOT Bureau of Construction and Materials by hand delivery, mail, e-mail or fax. Before awarding a contract, the Bureau of Construction and Materials will authenticate the Certificate through the Confirmation Number inserted on this Required Contract Provision or contained on the Certificate submitted.

If the Contractor is unable to retrieve the Tax Clearance Certificate or if KDOR denies the Contractor's Application for Tax Clearance, the Contractor shall call KDOR's Special Projects Team at 785-296-3199 to determine why KDOR failed to issue the Certificate.

Tax Clearance Certificates are valid for 90 days after issue. To renew a clearance, submit a new Tax Clearance Application. Information pertaining to a Tax Clearance is subject to change for various reasons, including a state tax audit, federal tax audit, agent actions, hearings, and other legal actions. The Tax Clearance Certificate is not "clearance" for all types of taxes the state of Kansas may assess.

Subcontractors also shall have a current Tax Clearance Certificate from KDOR before the Secretary approves them for subcontract work. The Contractor shall submit to the KDOT Field Office the Subcontractor's Tax Clearance Certificate with KDOT Form 259, Request for Approval of Subcontractor.



REQUIRED CONTRACT PROVISION  
DBE CONTRACT GOAL

\_\_\_\_\_ Answer 'Yes' if this provision applies. Answer 'No' if this provision does not apply.

The total dollar goal to be subcontracted to KDOT-Certified DBE firms on this contract is \$600,000.00 .

List all KDOT-Certified DBE subcontractors to be utilized. For each DBE subcontractor, identify the line item(s) of work from the Unit Prices List and the dollar value of the work to be subcontracted to the DBE.

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Line Item Number	\$ Value of Work (including DBE Mobilization, if any)	\$ Value of DBE Mobilization (even if \$0.00)
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

Total KDOT-Certified DBE \$ \_\_\_\_\_

Total KDOT-Certified DBE Mobilization \$ \_\_\_\_\_

\_\_\_\_\_  
(Bidder Number and Name)

(Note: Total Dollar Value of DBE Mobilization, if any, shall equal the bid amount for Bid Item "MOBILIZATION (DBE)". Also include the Dollar Value of DBE Mobilization in the Dollar Value of Work column above. If additional sheets are needed, attach to this sheet. However, show the contract total on this sheet. 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>.

STATE CONTRACT NO: 514112151

LETTING DATE: 11-19-14

PREPARED DATE: 11-14-14

REVISED DATE:

STATE PROJECT NO: I035-046 KA 3560-01

COUNTY: JOHNSON

THE BIDDER SHALL EXTEND ALL ITEMS AND TOTAL THE BID

SECTION 1 COMMON ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
1 020100	CONTRACTOR CONSTRUCTION STAKING	LSUM 1.00				
2 025600	FIELD OFFICE AND LABORATORY (TYPE A)	EACH 1.00				
3 025323	MOBILIZATION	LSUM 1.00				
4 070626	MOBILIZATION (DBE)	LSUM 1.00				
5 025200	REMOVAL OF EXISTING STRUCTURES	LSUM 1.00				
6 020001	MAINTENANCE AND RESTORATION OF HAUL ROADS (SET PRICE)	LSUM 1.00	16000.000		\$16,000.00	
7 070580	FLAGGER (SET PRICE)	HOURLY 1.00	40.000		\$40.00	
8 055660	TRAINEES HIGHWAY CONSTRUCTION (SET PRICE)	HOURLY 1,990.00	2.000		\$3,980.00	

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 2 ROAD ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
9 025361	CLEARING AND GRUBBING	LSUM 1.00				
10 012412	COMMON EXCAVATION (URB)	CUYD 59,359.00				
11 012415	COMMON EXCAVATION (CONTRACTOR FURNISHED)	CUYD 3,214.00				
12 012420	ROCK EXCAVATION	CUYD 52,179.00				
13 012317	COMPACTION OF EARTHWORK (TYPE A) (MR-5-5)	CUYD 3,511.00				
14 012318	COMPACTION OF EARTHWORK (TYPE AA) (MR-0-5)	CUYD 39,065.00				
15 010114	WATER (GRADING) (SET PRICE)	MGAL 1.00	35.000		\$35.00	
16 071055	FLOWABLE FILL (LOW STRENGTH)	CUYD 16.00				
17 012272	SLOPE DRAIN (CONCRETE)	LNFT 635.00				
18 012711	FLUME INLET (CONCRETE)	EACH 30.00				

CONTRACTOR

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 2 ROAD ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
19 016352	ADJUSTMENT OF EXISTING STRUCTURES	LSUM 1.00		
20 023456	GUARDRAIL, STEEL PLATE (MGS)	LNFT 4,800.00		
21 023449	GUARDRAIL, REMOVAL OF STEEL PLATE	LNFT 5,454.00		
22 038400	WEIGH-IN-MOTION DEVICE	LSUM 1.00		

SUBMIT A BID ON ONLY ONE SECTION IN THE FOLLOWING ALTERNATE: AA  
SECTION 3 GUARDRAIL END TERMINAL ALT.(MGS-FLEAT)  
ALTERNATE: AA1

23 030567	GUARDRAIL END TERMINAL (MGS-FLEAT)	EACH 5.00		
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SECTION 4 GUARDRAIL END TERMINAL ALT.(MGS-SRT)  
ALTERNATE: AA2

24 030566	GUARDRAIL END TERMINAL (MGS-SRT)	EACH 5.00		
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SUBMIT A BID ON ONLY ONE SECTION IN THE FOLLOWING ALTERNATE: BB  
SECTION 5 GUARDRAIL END TERMINAL ALT.(MGS-ET PLUS)  
ALTERNATE: BB1

25 023458	GUARDRAIL END TERMINAL (MGS-X-LITE)	EACH 1.00		
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CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 6 GUARDRAIL END TERMINAL ALT.(MGS-SKT)  
ALTERNATE: BB2

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS	CTS	AMOUNT BID -IN NUMBERS- DOLLARS	CTS
26 030562	GUARDRAIL END TERMINAL (MGS-SKT)	EACH  1.00				

SECTION 7 TEMP PRJ WTR POL CTL-SOIL EROSION ITEMS

27 072222	TEMPORARY FERTILIZER (15-30-15)	LBS.  1,020.00				
28 013589	TEMPORARY SEED (CANADA WILDRYE)	LBS.  136.00				
29 013544	TEMPORARY SEED (GRAIN OATS)	LBS.  306.00				
30 061377	TEMPORARY SEED (STERILE WHEATGRASS)	LBS.  306.00				
31 030537	SOIL EROSION MIX	LBS.  11.00				
32 072400	TEMPORARY BERM (SET PRICE)	LNFT  1.00		1.000		\$1.00
33 071320	TEMPORARY INLET SEDIMENT BARRIER	EACH  7.00				
34 010598	SILT FENCE	LNFT  250.00				

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 7      TEMP PRJ WTR POL CTL-SOIL EROSION ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
35 070894	BIODEGRADABLE LOG ( 9" )	LNFT  10,945.00		
36 070895	BIODEGRADABLE LOG (12" )	LNFT  10,945.00		
37 070896	BIODEGRADABLE LOG (20" )	LNFT  250.00		
38 071291	SEDIMENT REMOVAL (SET PRICE)	CUYD  1.00	35.000	\$35.00
39 000098	SWPPP DESIGN	LSUM  1.00		
40 000097	SWPPP INSPECTION	EACH  25.00		
41 000103	WATER POLLUTION CONTROL MANAGER	EACH  37.00		
42 072285	EROSION CONTROL (CLASS 1) (TYPE C)	SQYD  528.00		
43 030635	MULCHING (TACKING SLURRY)	LBS.  1,620.00		
44 041613	MULCHING (TEMPORARY)	TON  13.60		

----- CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 7      TEMP PRJ WTR POL CTL-SOIL EROSION ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS	CTS	AMOUNT BID -IN NUMBERS- DOLLARS	CTS
45 010123	WATER (EROSION CONTROL) (SET PRICE)	MGAL 1.00	35.000		\$35.00	

SECTION 8      BR.NO.35-46-14.34(315)NB

46 025522	AREA PREPARED FOR PATCHING	SQYD 10.00				
47 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 5.00				
48 025099	REINFORCING STEEL (REPAIR) (GRADE 60) (EPOXY) (SET PRICE)	LBS. 1.00	3.000		\$3.00	
49 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 1,868.00				
50 025479	DRILLING AND GROUTING	EACH 193.00				
51 014287	EXPANSION JOINT (STRIP SEAL ASSEMBLY)	LNFT 193.00				

SECTION 9      BR.NO.35-46-14.35(316)SB

52 025522	AREA PREPARED FOR PATCHING	SQYD 10.00				
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CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 9 BR.NO.35-46-14.35(316)SB

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
53 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 5.00		
54 025099	REINFORCING STEEL (REPAIR) (GRADE 60) (EPOXY) (SET PRICE)	LBS. 1.00	3.000	\$3.00
55 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 2,118.00		
56 025479	DRILLING AND GROUTING	EACH 289.00		
57 014287	EXPANSION JOINT (STRIP SEAL ASSEMBLY)	LNFT 219.00		

SECTION 10 BR.NO.35-46-14.86(317)

58 025522	AREA PREPARED FOR PATCHING	SQYD 10.00		
59 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 5.00		
60 025099	REINFORCING STEEL (REPAIR) (GRADE 60) (EPOXY) (SET PRICE)	LBS. 1.00	3.000	\$3.00
61 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 2,183.00		

CONTRACTOR



KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 10 BR.NO.35-46-14.86(317)

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
62 013745	BEARING (POT)	EACH 4.00		
63 025479	DRILLING AND GROUTING	EACH 16.00		
64 014241	BRIDGE DRAINAGE SYSTEM	LSUM 1.00		
65 014222	JACKING OF EXISTING STRUCTURE	LSUM 1.00		
66 010255	FALSEWORK INSPECTION	LSUM 1.00	2500.000	\$2,500.00

SECTION 11 BR.NO.35-46-15.27(318)SB

67 025522	AREA PREPARED FOR PATCHING	SQYD 10.00		
68 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 5.00		
69 025099	REINFORCING STEEL (REPAIR) (GRADE 60) (EPOXY) (SET PRICE)	LBS. 1.00	3.000	\$3.00
70 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 1,982.00		

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 11 BR.NO.35-46-15.27(318)SB

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
71 025479	DRILLING AND GROUTING	EACH  193.00		

SECTION 12 BR.NO.35-46-15.28(319)NB

72 025522	AREA PREPARED FOR PATCHING	SQYD  10.00		
73 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD  5.00		
74 025099	REINFORCING STEEL (REPAIR) (GRADE 60) (EPOXY) (SET PRICE)	LBS.  1.00	3.000	\$3.00
75 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD  1,868.00		
76 025479	DRILLING AND GROUTING	EACH  148.00		

SUBMIT A BID ON ONLY ONE SECTION IN THE FOLLOWING ALTERNATE: CC  
SECTION 13 TREATED BASE ALT. (CEMENT)  
ALTERNATE: CC1

77 025177	CEMENT TREATED BASE	SQYD  156,258.00		
78 025487	QUALITY CONTROL TESTING (CTB)	SQYD  156,258.00		

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 14 TREATED BASE ALT. (ASPHALT)  
ALTERNATE: CC2

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
79 013826	ASPHALT TREATED BASE	SQYD 156,258.00				
80 081699	QUALITY CONTROL TESTING (HMA)	TON 33,986.00				
81 025600	FIELD OFFICE AND LABORATORY (TYPE A)	EACH 1.00				
82 011750	ASPHALT CORE (SET PRICE)	EACH 1.00	45.000		\$45.00	
83 000030	ASPHALT AIR VOID PAY ADJUSTMENT	LSUM 1.00	1.000		\$1.00	
84 000029	ASPHALT DENSITY PAY ADJUSTMENT	LSUM 1.00	1.000		\$1.00	

SECTION 15 CONCRETE SURFACING ITEMS

85 061701	GUTTERS (AE)	LNFT 2,999.00				
86 013504	CONCRETE SAFETY BARRIER (TYPE II) (51")	LNFT 680.00				
87 012433	CONCRETE SAFETY BARRIER (TYPE IV)	LNFT 2,973.00				

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 15 CONCRETE SURFACING ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
88 070434	CONCRETE PAVEMENT (12" UNIFORM) (AE) (NRDJ)	SQYD 120,322.00				
89 070438	CONCRETE PAVEMENT (12" VARIABLE) (AE) (PLAIN)	SQYD 27,379.00				
90 013605	CONCRETE PAVEMENT (12" UNIFORM) (AE) (BR APP)	SQYD 3,912.00				
91 025509	BRIDGE APPROACH SLAB FOOTING	CUYD 373.30				
92 071713	QUALITY CONTROL TESTING (PCCP)	SQYD 151,613.00				
93 000012	CONCRETE PAVEMENT SMOOTHNESS	LSUM 1.00	1.000		\$1.00	
94 000031	CONCRETE PAVEMENT COMPOSITE PAY ADJUSTMENT	LSUM 1.00	1.000		\$1.00	
95 011748	CONCRETE CORE (SET PRICE)	EACH 1.00	120.000		\$120.00	
96 082803	FLY ASH	TON 6,163.00				
97 012969	MANIPULATION FOR TREATED SUBGRADE (FLY ASH)	SQYD 156,258.00				

CONTRACTOR

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 15 CONCRETE SURFACING ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
98 011764	MILLING	SQYD 120.00		
99 011477	WATER (TREATED SUBGRADE) (SET PRICE)	MGAL 1.00	35.000	\$35.00

SECTION 16 ASPHALT SURFACING ITEMS

100 041003	HMA-COMMERCIAL GRADE (CLASS A)	TON 3,211.00		
101 010169	AGGREGATE BASE (AB-3) ( 6")	SQYD 3,820.00		
102 010107	WATER (AGGREGATE BASE) (SET PRICE)	MGAL 1.00	35.000	\$35.00
103 025600	FIELD OFFICE AND LABORATORY (TYPE A)	EACH 1.00		

SECTION 17 CONCRETE PAVEMENT PATCHING ITEMS

104 013664	PCCP PATCHING (FULL DEPTH) (12") (SOUND)	SQYD 150.00		
105 013302	PCCP JOINT AND CRACK PATCHING (PARTIAL DEPTH)	SQYD 55.00		

CONTRACTOR

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 17 CONCRETE PAVEMENT PATCHING ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
106 037209	EXTRA WORK SAW CUTS (SET PRICE)	LNFT 1.00	3.500		\$3.50	

SECTION 18 SIGNING ITEMS

107 025500	SIGN (FLAT SHEET) (HIGH PERFORMANCE)	SQFT 8.00				
108 026176	SIGN POST (4" X 6" WOOD) (FLAT SHEET SIGN)	LNFT 70.00				
109 026184	SIGN POST (4" X 6" WOOD) (REINFORCED PANEL SIGN)	LNFT 96.00				
110 026173	SIGN POST (3 LB/FT "U" STEEL)	LNFT 26.00				
111 026036	SIGN POST FOOTING (18" WOOD POST CONCRETE)	LNFT 18.00				
112 025996	SIGNING DELINEATOR (TYPE A) (WHITE RIGID "U" POST)	EACH 67.00				
113 025994	SIGNING DELINEATOR (TYPE A) (YELLOW RIGID "U" POST)	EACH 4.00				
114 026494	SIGN (REMOVE AND RESET)	LSUM 1.00				

CONTRACTOR

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 19 PAVEMENT MARKING ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
115 023140	PAVEMENT MARKING (MULTI-COMPONENT) (WHITE) ( 6")	LNFT 53,329.00		
116 023141	PAVEMENT MARKING (MULTI-COMPONENT) (WHITE) ( 8")	LNFT 9,186.00		
117 023428	PAVEMENT MARKING (MULTI-COMPONENT) (WHITE) (12")	LNFT 1,672.00		
118 023192	PAVEMENT MARKING (MULTI-COMPONENT) (YELLOW) ( 6")	LNFT 33,115.00		

SECTION 20 SEEDING ITEMS

119 030344	FERTILIZER (15-30-15)	LBS. 544.00		
120 030384	SEED (BIG BLUESTEM GRASS) (KAW)	LBS. 13.60		
121 071588	SEED (CANADA WILD-RYE)	LBS. 68.00		
122 030455	SEED (INDIANGRASS) (OSAGE)	LBS. 13.60		
123 030383	SEED (LITTLE BLUESTEM GRASS) (ALDOUS)	LBS. 13.60		

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 20 SEEDING ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
124 030373	SEED (SIDE OATS GRAMA) (EL RENO)	LBS. 42.80				
125 031954	SEED (STERILE WHEATGRASS)	LBS. 68.00				
126 030545	SEED (SWITCHGRASS) (BLACKWELL)	LBS. 4.80				
127 023442	SEED (TALL DROP)	LBS. 3.40				
128 030569	SEED (WESTERN WHEATGRASS) (BARTON)	LBS. 27.20				
129 083463	SEED (NATIVE WILDFLOWER MIX 1)	LBS. 50.00				
130 030636	MULCHING (PERMANENT) (SET PRICE)	TON 1.00	250.000		\$250.00	

SECTION 21 WORK ZONE TRAFFIC CONTROL ITEMS

131 025331	WORK ZONE SIGNS ( 0 TO 9.25 SQ.FT.)	EADA 95,040.00				
132 025332	WORK ZONE SIGNS ( 9.26 TO 16.25 SQ.FT.)	EADA 17,040.00				

CONTRACTOR



KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 21 WORK ZONE TRAFFIC CONTROL ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
133 025333	WORK ZONE SIGNS (16.26 SQ.FT. & OVER)	EADA 3,360.00				
134 025376	WORK ZONE BARRICADES (TYPE III - 4 TO 12 LIN. FT.)	EADA 15,120.00				
135 011492	CHANNELIZER (PORTABLE)	EADA 125,760.00				
136 025343	WORK ZONE WARNING LIGHT (TYPE "A" LOW INTENSITY)	EADA 15,360.00				
137 025364	ARROW DISPLAY	EADA 480.00				
138 025365	PORTABLE CHANGEABLE MESSAGE SIGN	EADA 1,440.00				
139 070916	PAVEMENT MARKING (TEMP) 4" SOLID (TYPE I TAPE OR PAINT)	STAL 1,161.50				
140 070917	PAVEMENT MARKING (TEMP) 4" SOLID (TYPE II TAPE OR PAINT)	STAL 512.80				
141 070914	PAVEMENT MARKING (TEMP) 4" BROKEN (8')(TYPE I TAPE OR PAINT)	STAL 74.50				
142 070915	PAVEMENT MARKING (TEMP) 4" BROKEN (8')(TYPE II TAPE OR PAINT)	STAL 56.00				

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 21 WORK ZONE TRAFFIC CONTROL ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
143 070918	PAVEMENT MARKING (TEMP) 4" DOTTED EXTENSION (TYPE I TAPE OR PAINT)	STAL  1.60				
144 070919	PAVEMENT MARKING (TEMP) 4" DOTTED EXTENSION (TYPE II TAPE OR PAINT)	STAL  0.80				
145 013019	PAVEMENT MARKING REMOVAL	LNFT  55,656.00				
146 011927	CONCRETE SAFETY BARRIER (TYPE F3) (TEMPORARY)	LNFT  14,950.00				
147 011929	CONCRETE SAFETY BARRIER (TYPE F3) (TEMPORARY - RELOCATE)	LNFT  16,475.00				
148 046015	INERTIAL BARRIER SYSTEM	EACH  4.00				
149 018154	REPLACEMENT MODULES	EACH  20.00				
150 082001	WORK ZONE SIGN (SPECIAL) (16.25 SQ.FT. & LESS)	EACH  62.00				
151 082002	WORK ZONE SIGN (SPECIAL) (16.26 SQ.FT. & OVER)	EACH  25.00				
152 072116	TRAFFIC CONTROL (INITIAL SETUP)	LSUM  1.00				

CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION  
UNIT PRICES LIST

STATE CONTRACT NO: 514112151  
STATE PROJECT NO: I035-046 KA 3560-01

PREPARED DATE: 11-14-14  
REVISED DATE:

SECTION 21 WORK ZONE TRAFFIC CONTROL ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS   CTS	AMOUNT BID -IN NUMBERS- DOLLARS   CTS
153 023178	TWORKS SIGN ASSEMBLY (LARGE)	EACH  2.00	   	   
154 081128	IMPACT ATTENUATOR (TEMPORARY)	EACH  1.00	   	   

GRAND TOTAL :

----- CONTRACTOR

STATE PROJECT NO: I035-046 KA 3560-01

STATE CONTRACT NO: 514112151

WAGE AREA: 5

PREPARED DATE: 19SEP14  
REVISED DATE: 12NOV14

DISTRICT: 1 COUNTY: JOHNSON

DESCRIPTION: PAVEMENT RECONSTRUCTION.  
LOCATION IS I-35 N OF K-7 N TO SANTA FE  
IN JOHNSON COUNTY.  
NET LENGTH IS 1.909 MILES.

NOTE: THE FOLLOWING LIST OF SPECIAL PROVISIONS ARE FOR THIS  
PROJECT. OMISSION OF ALL OR PART OF A SPECIAL  
PROVISION IN THE ATTACHED PROPOSAL (CONTRACT) DOES  
NOT RELIEVE THE CONTRACTOR OF THE RESPONSIBILITY FOR  
OBTAINING THE COMPLETE PROVISION AS LISTED.

PROVISION NO. DESCRIPTION

-----  
08-10-66-R05 REQUIRED CONTRACT PROVISION-NONCOLLUSION / HISTORY-DEBARMENT  
04-30-82-R07 REQUIRED CONTRACT PROVISION-FINANCIAL PREQUALIFICATION  
08-04-92-R03 REQUIRED CONTRACT PROVISION-CONTRACTUAL SERVICES-LEGISLATOR  
04-26-90-R05 REQUIRED CONTRACT PROVISION-LIMITS OF FED FUNDS FOR LOBBYING  
10-10-00-R06 REQUIRED CONTRACT PROVISION-PRICE ADJUSTMENT FOR FUEL  
06-01-06 REQUIRED CONTRACT PROVISION-PRICE ADJUSTMENT FOR ASPHALT  
07-19-80-R12 REQUIRED CONTRACT PROVISION-DBE CONTRACT GOAL  
11-03-80-R09 REQUIRED CONTRACT PROVISION-NOTICE FOR AFFIRMATIVE ACTION  
11-15-96-R05 REQUIRED CONTRACT PROVISION-EEO REQUIREMENT  
02-01-95-R02 REQUIRED CONTRACT PROVISION-AREA PRACTICE DG-JO-LV-MI-SN-WY  
01-01-11-R01 REQUIRED CONTRACT PROVISION-TAX CLEARANCE CERTIFICATE  
09-06-94-R01 NOTICE TO CONTRACTORS (USDOT HOTLINE)  
KS140009 MINIMUM WAGE RATE (AREA 5)  
FHWA-1273 REQUIRED CONTRACT PROVISION-FEDERAL-AID CONSTRUCTION CONTRACTS  
03-10-06-R01 REQUIRED CONTRACT PROVISION-DBE SUPPLIERS/REGULAR DEALERS  
07-18-80-R27 REQUIRED CONTRACT PROVISION-UTILIZATION OF DBE'S  
07-ER-1-R25 ERRATA SHEET FOR 2007 STANDARD SPECIFICATION  
07-01501-R01 CONCRETE PAVEMENT AND CONCRETE STRUCTURE EQUIPMENT  
07-01002 INFORMATION TO CONTRACTORS (STATUS OF UTILITIES)  
07-01007-R01 HIGHWAY CONSTRUCTION TRAINEES  
07-01008-R05 PRICE ADJUSTMENT FOR FUEL  
07-01009-R06 PRICE ADJUSTMENT FOR ASPHALT MATERIALS  
07-01010 ENVIRONMENTAL CONCERNS-MIGRATORY BIRD TREATY ACT  
07-01017-R03 MEASUREMENT AND PAYMENT  
07-01018-R03 CONTROL OF MATERIALS  
07-01019-R08 BIDDING REQUIREMENTS AND CONDITIONS  
07-01020 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC  
07-01021 SCOPE OF WORK  
07-01022 PROSECUTION AND PROGRESS  
07-02003-R02 EXCAVATION AND EMBANKMENT FOR HIGHWAYS  
07-02007 REMOVAL OF EXISTING STRUCTURES  
07-02008-R01 CLEARING AND GRUBBING

STATE PROJECT NO: I035-046 KA 3560-01 STATE CONTRACT NO: 514112151

WAGE AREA: 5

PREPARED DATE: 19SEP14  
REVISED DATE: 12NOV14

DISTRICT: 1 COUNTY: JOHNSON

DESCRIPTION: PAVEMENT RECONSTRUCTION.  
LOCATION IS I-35 N OF K-7 N TO SANTA FE  
IN JOHNSON COUNTY.  
NET LENGTH IS 1.909 MILES.

PROVISION NO. DESCRIPTION

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07-03001-R03	CEMENT TREATED BASE
07-03002	CEMENT OF FLY ASH TREATED SUBGRADE
07-04002-R07	CONCRETE
07-05001-R02	PORTLAND CEMENT CONCRETE PAVEMENT SMOOTHNESS
07-05002-R05	PORTLAND CEMENT CONCRETE PAVEMENT (QC/QA)
07-06013-R04	HOT MIX ASPHALT (HMA) COMMERCIAL GRADE
07-06015	MILLING
07-07005	BRIDGE DRAINAGE SYSTEM
07-07006	EXPANSION JOINTS
07-07013-R03	MULTI-LAYER POLYMER CONCRETE OVERLAY
07-07014-R02	CONTROLLED DEMOLITION
07-07016-R01	STRUCTURAL STEEL CONSTRUCTION
07-07027-R01	REINFORCING STEEL
07-07029-R01	AREA PREPARED FOR PATCHING
07-08004	BRIDGE APPROACH SLAB FOOTING
07-08011-R06	PAVEMENT PATCHING
07-08021	ADJUSTMENT OF EXISTING STRUCTURES
07-08024-R04	DURABLE PAVEMENT MARKING
07-08025	REMOVAL OF EXISTING PAVEMENT MARKINGS
07-08026-R01	PAINTED PAVEMENT MARKING
07-08030-R06	WORK ZONE TRAFFIC CONTROL AND SAFETY
07-08031-R01	MAINTENANCE AND RESTORATION OF HAUL ROADS
07-08034-R01	IMPACT ATTENUATOR
07-08036-R04	CONTRACTOR CONSTRUCTION STAKING
07-08037-R01	TWORKS SIGNS
07-08044	TAPERED PAVEMENT EDGE
07-08045	FIELD OFFICE AND LABORATORY
07-09001-R02	MULCHING
07-09004	SEEDING
07-11002-R05	AGGREGATES FOR HOT MIX ASPHALT (HMA)
07-11004-R09	AGGREGATES FOR ON GRADE CONCRETE
07-11005-R02	AGGREGATES FOR AGGREGATE BASE CONSTRUCTION
07-11008-R01	GENERAL REQUIREMENTS FOR AGGREGATES
07-11009	AGGREGATES FOR NOT ON GRADE CONCRETE
07-12001-R01	EMULSIFIED ASPHALT
07-12002	WARM MIX ASPHALT ADDITIVES
07-12004	PERFORMANCE GRADED ASPHALT BINDER
07-12005	GENERAL REQUIREMENTS-ASPHALT
07-14001	CHEMICAL ADMIXTURES FOR CONCRETE
07-15001-R01	STRIP SEAL ASSEMBLY

WAGE AREA: 5

PREPARED DATE: 19SEP14

REVISED DATE: 12NOV14

DISTRICT: 1 COUNTY: JOHNSON

DESCRIPTION: PAVEMENT RECONSTRUCTION.  
 LOCATION IS I-35 N OF K-7 N TO SANTA FE  
 IN JOHNSON COUNTY.  
 NET LENGTH IS 1.909 MILES.

PROVISION NO. DESCRIPTION

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07-15002	HOT JOINT SEALING COMPOUND
07-15003	COLD APPLIED CHEMICALLY CURED JOINT SEALANT
07-16001-R03	STEEL BARS FOR CONCRETE REINFORCEMENT
07-16002	STEEL SIGN POSTS
07-16003	REINFORCING STEEL SPLICES
07-16004	STEEL FASTENERS
07-16006	EPOXY COATED STEEL FOR CONCRETE REINFORCEMENT
07-16007	HELICAL REINFORCEMENT
07-16008	WELDED STEEL WIRE FABRIC FOR CONCRETE REINFORCEMENT
07-16009	HEADED REINFORCING ANCHORS
07-17001	RAPID-SET CONCRETE PATCHING MATERIAL
07-17002-R03	EPOXY-RESIN-BASE BONDING SYSTEMS FOR CONCRETE
07-17003	BEARINGS AND PADS FOR STRUCTURES
07-17005	NON-METALLIC DRUMS AND CONICAL PORTABLE DELINEATORS
07-17006	FIBROUS REINFORCEMENT FOR CONCRETE
07-17010-R01	POLYMER RESINS FOR POLYMER CONCRETE OVERLAY SYSTEMS
07-20001-R02	PORTLAND CEMENT AND BLENDED HYDRAULIC CEMENT
07-20002	FLY ASH FOR USE IN CONCRETE
07-21001-R01	MULCH
07-21002	SILT FENCE
07-22001-R01	RETROREFLECTIVE SHEETING
07-22002	HIGH DURABILITY PAVEMENT MARKING TAPE
07-22003	IMAGE SYSTEMS FOR RETROREFLECTIVE SHEETING
07-25001-R02	PART V
07-26001	MATERIALS CERTIFICATIONS
07-PS0159-R1	HMA CONSTRUCTION-ASPHALT TREATED BASE-ALTERNATE
07-PS0303-R1	FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES
07-PS0360-R7	TEMPORARY EROSION AND POLLUTION CONTROL
07-PS0434	CONSENT DECREE
07-PS0477	WEIGH-IN-MOTION SYSTEM
07-PS0487-R1	NORTHERN LONG - EARED BAT (NLEB)
07-WS0250	WORK SCHEDULE
07-RF0119	RAILROAD FLAGGING REQUIREMENTS
07-WZ0001	KS WORK ZONE SAFETY & MOBILITY PROCESSES & PROCEDURES

END OF SPECIAL PROVISION LIST

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**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, EDITION 2007**

**SPECIAL CONDITIONS – ENVIRONMENTAL**

**NORTHERN LONG-EARED BAT (NLEB)**

Construction activities associated with this project will impact the suitable habitat for the proposed federally endangered Northern Long-Eared Bat (NLEB).

Trees impacted are those 3 inches in diameter and greater, measured at approximately 4 feet above ground level.

When trees greater than 3 inches in diameter are designated for removal on the project, or are to be removed from borrow areas, cut them down by April 2, 2015 with minimal disturbance to the ground. The trees may be cut and stumps left 2 to 3 feet high until complete clearing and grubbing is scheduled, but cut off any protruding, vertical branches greater than 3 inches in diameter that are higher than 3 feet.

Immediately remove trees in drainage areas or other problem areas with minimal disturbance to the ground.

Do not cut down or clear and grub any trees greater than 3 inches in diameter between April 2, 2015 and October 31, 2015.

In subsequent years, do not cut down or clear and grub any trees greater than 3 inches between March 1 and October 31.

With approval from the Engineer, the project may be suspended after this work is completed.

10-23-14 C&M  
Nov-14 Letting

>

General Decision Number: KS140009 08/08/2014 KS9

Superseded General Decision Number: KS20130009

State: Kansas

Construction Type: Highway

Counties: Johnson, Miami and Wyandotte Counties in Kansas.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/03/2014
1	05/09/2014
2	06/06/2014
3	07/18/2014
4	07/25/2014
5	08/08/2014

BOIL0083-001 01/01/2012

	Rates	Fringes
BOILERMAKER.....	\$ 32.31	25.46

\* BRKS0015-002 04/01/2014

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 33.50	17.20

CARP4088-006 05/01/2014

JOHNSON AND WYANDOTTE COUNTIES

	Rates	Fringes
CARPENTER.....	\$ 36.05	14.95

CARP4088-007 05/01/2014

MIAMI COUNTY

	Rates	Fringes
CARPENTER.....	\$ 33.88	14.95

ELEC0053-001 09/02/2012

JOHNSON (EAST OF MONTICELLO, OLATHE, AND SPRING HILL TOWNSHIPS) AND WYANDOTTE COUNTIES

	Rates	Fringes
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Line Construction:  
 TELEPHONE AND TELEGRAPH  
 WORK INCLUDING CATV WORK:  
 CABLE SPLICERS; AIR  
 PRESSURE TECHNICIANS;  
 CENTRAL OFFICE EQUIPMENT



MAN.....	\$ 23.31	20.5%+5.00
EQUIPMENT OPERATOR (TRENCHERS AND ALL OTHER EQUIPMENT).....		
	\$ 19.39	20.5%+5.00
GROUNDMAN - WINCH DRIVER...	\$ 16.76	20.5%+5.00
GROUNDMAN.....	\$ 13.49	20.5%+5.00
TELEPHONE LINEMAN AND INSTALLER REPAIRMAN; CATV TERMINATOR; EQUIPMENT OPERATOR (1/4 YD. BACKHOE AND LARGER AND D-4 CRAWLERS AND LARGER).....		
	\$ 22.13	20.5%+5.00

ELEC0053-002 09/02/2012

JOHNSON COUNTY (EAST OF MONTICELLO, OLATHE, AND SPRING HILL TOWNSHIPS) AND WYANDOTTE COUNTIES

	Rates	Fringes
Line Construction:		
LINE CONSTRUCTION:		
GROUNDMAN POWDERMAN.....	\$ 26.84	13.08
GROUNDMAN.....	\$ 25.95	29.5%+6.30
LINEMAN OPERATOR.....	\$ 36.54	29.5%+6.83
LINEMAN.....	\$ 39.17	29.5%+6.96
LINEMEN.....	\$ 38.40	34.5%+5.00
POLE TREATING:		
POLE TREATING GROUNDMAN....	\$ 23.54	34.5%+5.00
POLE TREATING SPECIALIST...	\$ 40.18	34.5%+5.00
POLE TREATING TRUCK DRIVER..	\$ 25.23	34.5%+5.00
TRANSMISSION LINES: (RAILROAD AND CROSS COUNTRY)		
GROUNDMAN, POWDERMAN.....	\$ 25.23	34.5%+5.00
GROUNDMAN.....	\$ 23.54	34.5%+5.00
LINEMAN OPERATOR.....	\$ 33.76	34.5%+5.00
LINEMAN.....	\$ 36.53	34.5%+5.00

ELEC0124-005 09/02/2013

	Rates	Fringes
Communication Technician.....	\$ 35.23	19.53
Electricians, Including Low Voltage.....		
	\$ 35.23	19.53

ELEC0304-001 07/01/2010

JOHNSON (Except that portion East of Monticello, Olathe, and Spring Hill Townships); MIAMI COUNTY

	Rates	Fringes
Cable Splicer.....	\$ 32.90	4.76+29.75%
Groundman.....	\$ 19.55	4.76+29.75%
Line truck and equipment operators.....		
	\$ 27.11	4.76+29.75%
Linemen.....	\$ 32.90	4.76+29.75%
Traffic signal technician.....	\$ 32.90	4.76+29.75%

ENGI0101-009 04/01/2014

Rates Fringes

Power equipment operators:

GROUP 1.....	\$ 34.58	15.13
GROUP 2.....	\$ 33.54	15.13
OILERS/DRIVERS (ALL TYPES)..	\$ 32.42	15.13
OILERS.....	\$ 29.07	15.13

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Asphalt roller operator, finish; asphalt paver and spreader; asphalt plant operator; concrete plant operator; la tourneau roter (all tiller types); concrete mixer paver; slip form paver operator (CMI, Rex, Gomeco or equal); finishing machine operator; auto grader or trimmer or sub-grader; side discharge spreader; concrete pump operator; back hoe; blade operator (all types); bulldozer operator; high loader - fork lift - skid loader (all types); quad track; scraper operators (all types); push cat; ditching machine; boilers - 2; booster pump on dredge; dredge engineman, dredge operator; tow boat operator; hoisting engineer (2 active drums); crane operator; derrick or derrick trucks; drag line operator; pile drive operator; pitman crane or boom truck (all types); shovel operator; truck crane; clamshell operator; drilling or boring machine (rotary - self propelled); boring machine (truck or crane mounted); skimmer scoop operator; mucking machine operator; sideboom cats; locomotive operator (standard gage); drillcat with compressor mounted (self-contained) or similar type self propelled rotary drill (not air tract); mechanics and welders (field andplants); wood and log chippers (all types); greaser

GROUP 2 - A-Frame truck operator, articulated dump truck; hoisting engine (one drum); roller operator (with or without blades); boilers (1); distributor operator; fireman rig; tank car heater operator (combination boiler and booster); chip spreader; back filler operator; farm tractor (all attachments); multiple compactor; concrete mixer operator, skip loader; elevating grader operator; pavement breaker, self-propelled hydra-hammer (or similar type); power shield; churn drill operator; concrete saws (self propelled); conveyer operator; float operator; form grader operator; screening and washing plant; siphons and jets; vibrating machine operator (not hand held); crusher operator; conveyor operator; paymill operator; maintenance operator; welding machine; compressor, pumps; self-propelled street broom or sweeper; stump cutting machine; straw blower.

FOOTNOTE:

HOURLY PREMIUMS

FOLLOWING CLASSIFICATIONS SHALL RECEIVE (\$1.00) ABOVE GROUP 1 RATE: Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. of boom or over (including jib) - draglines, 3 yd.capacity or over - piledrivers 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over.

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IRON0010-003 04/01/2014

Rates	Fringes
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Ironworkers:

JOHNSON, WYANDOTTE COUNTIES..	\$ 30.50	27.05
MIAMI COUNTY		

(All other work).....	\$ 24.50	21.78
(Only to include major bridge crossings over a body of water, power plants, new major dam or lock projects, major missile site alterations and new television tower projects).....	\$ 27.50	27.05

LABO1290-006 04/01/2014

MIAMI COUNTY

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 28.06	14.25
GROUP 2.....	\$ 29.27	14.25

LABORERS CLASSIFICATIONS

GROUP 1: General laborer - Carpenter Tenders, Salamander Tenders, Loading Trucks under bins, Hoppers and Conveyors, Track Men and all other General Laborers, Air Tool Operator, Cement Handler (Bulk or Sack), Chain or Concrete Saw, Deck Hands, Dump Man or earth fill, Georgie Buggies Man, Material Batch Hopper Man, Scale Man, Material Mixer Man, (except on Manholes), Cofferdams, Abatments and Pier Hole Men working below ground, Riprap Pavers Rock, Black or Brick Signal Man, Scaffolds over ten feet not self supported from ground up, Skipmanor concrete, paving, Wire Mash Setters or concrete paving, Pipelayer on all work in connection with Sewer, Water, Gas, Gasoline, Oil, Drainage Pipe, Conduit Pipe, Tile and Duct Lines and all other pipelines whether pressurized or non-pressurized, regardless of type of material, Power Tool Operator, all work in connection with Hydraulic or General Dredging Operations, Form Setter Helpers Pudlers (paving only), Crusher Feeder, Men handling creosote ties on creosote materials, Men working with and handling epoxy material or materials (where special protection is required), Topper of Standing Trees, Batter Board Man on Pipe and Ditch work, Feeder Man on Wood Pulvarizer Board and Willow Mat Weavers and Cable Tiers on River Work, all Laborers working on underground tunnels where compressed air is not used.

GROUP 2: Spreader or Screed Man on Asphalt Machine, Asphalt Raker, Grade Checker, Mill Setter, Concrete Specialist, Vibrator Man, Concrete Saw over 5 hp., Laser Beam Man, Barco Tamper, Jackson or any other similar Tamp, Wagon Driller, Churn Drills, Air Track Drills and all other similar Drills, Cutting Torch Man, Form Setters, Liners and Stringline Men on Concrete Paving, curb, Gutters and etc., Hot Mastic Kettleman, Hot Tar Applicator, Hand Blade Operators, Manhole Builders Helpers and Mortar Men on Brick or Block Manholes, Sand Blasting and Gunnite Nozzle Men, Rubbing Concrete, Air Tool Operator in Tunnels, Head Pipe Layer on Sewer work, Manhole Builder (Brick or Block), Dynamite and Powder Men, Welder, Hazardous Waste Work.

LABO1290-007 04/01/2014

JOHNSON AND WYANDOTTE COUNTIES

Rates Fringes

Laborers:

GROUP 1.....	\$ 28.06	14.25
GROUP 2.....	\$ 29.27	14.25

LABORERS CLASSIFICATIONS

GROUP 1: General laborer - Carpenter Tenders, Salamander Tenders, Loading Trucks under bins, Hoppers and Conveyors, Track Men and all other General Laborers, Air Tool Operator, Cement Handler (Bulk or Sack), Chain or Concrete Saw, Deck Hands, Dump Man or earth fill, Georgie Buggies Man, Material Batch Hopper Man, Scale Man, Material Mixer Man, (except on Manholes), Cofferdams, Abatments and Pier Hole Men working below ground, Riprap Pavers Rock, Black or Brick Signal Man, Scaffolds over ten feet not self supported from ground up, Skipmanor concrete, paving, Wire Mash Setters or concrete paving, Pipelayer on all work in connection with Sewer, Water, Gas, Gasoline, Oil, Drainage Pipe, Conduit Pipe, Tile and Duct Lines and all other pipelines whether pressurized or non-pressurized, regardless of type of material, Power Tool Operator, all work in connection with Hydraulic or General Dredging Operations, Form Setter Helpers Pudlers (paving only), Crusher Feeder, Men handling creosote ties on creosote materials, Men working with and handling epoxy material or materials (where special protection is required), Topper of Standing Trees, Batter Board Man on Pipe and Ditch work, Feeder Man on Wood Pulvarizer Board and Willow Mat Weavers and Cable Tiers on River Work, all Laborers working on underground tunnels where compressed air is not used.

GROUP 2: Spreader or Screed Man on Asphalt Machine, Asphalt Raker, Grade Checker, Mill Setter, Concrete Specialist, Vibrator Man, Concrete Saw over 5 hp., Laser Beam Man, Barco Tamper, Jackson or any other similar Tamp, Wagon Driller, Churn Drills, Air Track Drills and all other similar Drills, Cutting Torch Man, Form Setters, Liners and Stringline Men on Concrete Paving, curb, Gutters and etc., Hot Mastic Kettleman, Hot Tar Applicator, Hand Blade Operators, Manhole Builders Helpers and Mortar Men on Brick or Block Manholes, Sand Blasting and Gunnite Nozzle Men, Rubbing Concrete, Air Tool Operator in Tunnels, Head Pipe Layer on Sewer work, Manhole Builder (Brick or Block), Dynamite and Powder Men, Welder, Hazardous Waste Work.

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 PAIN0003-002 04/01/2013

Rates Fringes

Painters:

Brush & roller.....	\$ 28.58	14.97
Paperhangers.....	\$ 29.08	14.97
Sandblast - base.....	\$ 30.20	14.97
Sandblast: bridge, stage, erected steel, and storage bin and tank.....	\$ 30.20	14.97
Spray storage bin and tanks; Spray elevated tanks; Stageman - spray; Bridge - spray; Steelman - spray.....	\$ 30.20	14.97
Spray.....	\$ 29.70	14.97
Stepplejack - spray or		

sandblast.....	\$ 33.77	14.97
Stepplejack.....	\$ 33.77	14.97
Storage bin and tanks, elevated tanks, stageman, beltman, bridge- man, steelman; elevator shaft.....	\$ 29.70	14.97

12.90

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PLAS0518-012 04/01/2012

JOHNSON AND WYANDOTTE COUNTIES

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER....	\$ 29.24	14.38

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PLUM0008-005 06/01/2012

	Rates	Fringes
PLUMBER		
Johnson and Wyandotte.....	\$ 37.45	20.41
Miami.....	\$ 35.01	20.41

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PLUM0533-002 06/01/2013

	Rates	Fringes
PIPEFITTER.....	\$ 40.58	19.07

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SFKS0669-001 07/01/2013

	Rates	Fringes
SPRINKLER FITTER.....	\$ 29.67	17.00

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SHEE0002-004 07/01/2012

	Rates	Fringes
Sheet metal worker.....	\$ 38.39	17.73

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TEAM0541-004 04/01/2014

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 30.71	13.20
GROUP 2.....	\$ 30.14	13.20
GROUP 3.....	\$ 29.62	13.20

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Mechanics and welders-field; A-frame low boy - boom truck driver.

GROUP 2: Articulated dump truck; insley wagons: dump trucks, excavating, 5 cu. yds. and over, dumpsters, half-tracks, speedace, euclids and similar excavating equipment material trucks; tandem two teams; semi-trailers, winch trucks-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi.; one team; station wagons; pickup truck; material trucks, single axle; tank wagon drivers, single axle

GROUP 3: Oilers, greasers-field

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TEAM0541-008 03/25/2000

	Rates	Fringes
Traffic control service driver...	\$ 14.15	2.44+a

a. PAID HOLIDAYS: New Year's Day, Decoration Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day, Employee's birthday and 2 personal days.

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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 WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board

U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

**10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 CFR Part 26 in the award and administration of DOT-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 contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:



"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. 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 prospective lower tier participant 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.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, 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.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Status of Utilities Report

October 16, 2014

35-46 KA 3560-01

Johnson County

Company	Notified to move	Work started	Percent Complete	Completion Date (est.)	Permit or Agreement #
	There are no utility conflicts with this project.				
	Please see attached e-mail.				
	All precautionary action required by law prior to excavation is to be taken in accordance.				

The information provided in this document does not constitute a guarantee that utility facilities will be clear of construction. The information is gathered from both KDOT field personnel and utility company personnel. Estimated completion dates are dependent upon many variables (weather, material or product availability, r/w acquisition, etc.). The estimated completion date is an estimate.

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, EDITION 2007**

**SECTION 602**

**HOT MIX ASPHALT (HMA) CONSTRUCTION  
Asphalt Treated Base (ATB)-Alternate**

**Page 600-2, subsection 602.1. Add the following to the Description:**

Only use the item Asphalt Treated Base when bid as an alternate to Cement Treated Base.

**Page 600-2, subsection 602.1. Add the following bid item:**

**BID ITEMS**

Asphalt Treated Base

**UNITS**

Square Yard

**Page 600-8, add the following to the end of subsection 602.3:**

Design and construct the Asphalt Treated Base (ATB) to the same standards as a HMA Base (SR-19A) (PG 64-22). The asphalt mix listed in **TABLE 1** has the following project mix requirements. [Reference **TABLE 602-1: COMBINED AGGREGATE REQUIREMENTS**].

**TABLE 1: PROJECT MIX REQUIREMENTS**

MIX CRITERIA	SR-19A(PG64-22) <sup>(1)</sup>
<b>AGGREGATE:</b>	
Coarse Angularity (min. %)	50
Uncompacted Voids-Fine (min. %)	42
Sand Equivalent (min. %)	40
RAP (max. %)	25
<b>COMPACTION REVOLUTIONS:</b>	
N <sub>mi</sub> (level of compaction)	7 (≤ 90.5)
N <sub>des</sub>	75
N <sub>max</sub>	115
<b>MIX:</b>	
VFA	65 – 78

<sup>(1)</sup> Mix properties will follow those for a base below the top 4" from the surface in the traffic range of 0.3 to 3 million ESALS.

**Page 600-12, delete the first sentence of subsection 602.4e.(7)(a)(ii) and change to:**

(ii) HMA Surface, HMA Base, HMA Pavement and Asphalt Treated Base.

**Page 600-21, delete the heading of subsection 602.9c. and change to:**

**c. Density Pay Adjustment for Bid Items "HMA Surface", "HMA Base", "HMA Pavement" and "Asphalt Treated Base".**

**Page 600-27, add the following subsection 602.11g.:**

**g. Asphalt Treated Base.** The Engineer will measure "Asphalt Treated Base" by the square yard of the measured in-place material. All lifts, except the surface course, will be measured by the Contractor and verified by the Engineer. The Engineer will measure the surface course.

Unless the Engineer authorizes in writing to increase the area of Asphalt Treated Base, the Engineer will use dimensions shown in the Contract Documents and as measured in the field to calculate the final pay quantity. If the Engineer authorizes in writing to increase the area of Asphalt Treated Base, the additional area will be measured and paid for as "Asphalt Treated Base". The length will be measured horizontally along the centerline of each roadway or ramp.

Payment for "Asphalt Treated Base " at the contract unit prices is full compensation for the specified work.

The Contractor will receive no additional compensation for overlaying or for removing and replacing areas of deficient thickness. Exploratory cores will not be measured for payment.

**Subsection 602.9d.** will apply to Asphalt Treated Base.

Asphalt Treated Base is not eligible for thickness, area or smoothness adjustments.

**Page 600-28, subsection 602.11f., delete the first sentence and replace with the following:**

The Engineer will measure Quality Control Testing (HMA) performed by the Contractor on a per ton basis of HMA Surface, HMA Base, HMA Overlay, HMA Pavement and Asphalt Treated Base placed on the project.

11-04-10 M&R (GMS)

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, EDITION 2007**

**07-18-80, latest revision**

**FEDERAL AID CONTRACTS  
UTILIZATION OF DISADVANTAGED BUSINESSES**

**Sheet 2, delete subsection II.E. and replace with the following:**

**F.** When projects are State or Contractor tied, the assigned DBE Contract Goals must be met for each project. To check DBE participation on tied projects the following method will be used:

(1) If the dollar amount actually subcontracted to DBEs on each contract is equal to or greater than the minimum dollar amounts assigned to each contract, it will be determined that the DBE goals have been met.

(2) 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.

11-21-11 C&M  
Dec-11 Letting



**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, 2007 EDITION**

Delete SECTION 901 and replace with the following:

**SECTION 901**

**TEMPORARY EROSION AND POLLUTION CONTROL**

**901.1 DESCRIPTION**

Install, maintain and remove temporary erosion and pollution control devices as required during the construction of the project.

**BID ITEMS**

Temporary Berm (Set Price)  
Temporary Slope Drain  
Silt Fence  
Biodegradable Log (\*\*\*\*)  
Synthetic Sediment Barrier  
Filter Sock (\*\*\*\*)  
Temporary Ditch Check (Rock)  
Temporary Inlet Sediment Barrier  
Temporary Sediment Basin  
Temporary Stream Crossing  
Sediment Removal (Set Price)  
Temporary Fertilizer (\*\*)  
Temporary Seed (\*\*\*)  
Soil Erosion Mix  
Temporary Seeding  
Erosion Control (\*)  
Mulching (Temporary)  
Water (Erosion Control) (Set Price)  
Geotextile (Erosion Control)  
SWPPP Design  
SWPPP Inspection  
Water Pollution Control Manager  
\* Class & Type  
\*\* Type of Fertilizer  
\*\*\* Type  
\*\*\*\* Size

**UNITS**

Linear Foot  
Linear Foot  
Linear Foot  
Linear Foot  
Linear Foot  
Linear Foot  
Cubic Yard  
Each  
Cubic Yard  
Each  
Cubic Yard  
Pound  
Pound  
Pound  
Lump Sum  
Square Yard  
Ton  
M Gallon  
Square Yard  
Lump Sum  
Each  
Each

**901.2 MATERIALS**

**a.** Provide erosion control devices, sediment barriers, fertilizers, seeds, soil erosion mix, erosion control materials and mulch that comply with **DIVISION 2100**.

Provide aggregate that complies with aggregate ditch lining,  $D_{50} = 6$  inches, **DIVISION 1100**. Existing aggregate from the project may be used under this specification, provided all applicable physical requirements are met.

Provide water for erosion control that complies with **DIVISION 2400**.

Provide geotextile (erosion control) that complies with **SECTION 1710** (Special Provision 07-17004, latest revision) for separation geotextile.

**b. Temporary Slope Drain.** Provide metal pipe, plastic pipe or flexible rubber pipe for temporary slope drains.

The Engineer will accept the material for temporary slope drain based on the condition of the pipe and visual inspection of the installed drain.

**c. Biodegradable Logs.** Provide commercially available biodegradable logs manufactured from straw, excelsior wood fiber, coconut fiber, jute or other biodegradable material bound with an open mesh fabric of jute or light-weight plastic.

Do not use biodegradable logs manufactured from straw for ditch checks or inlet sediment barriers.

The Engineer will accept the biodegradable logs based on compliance with dimensional and other requirements shown in the Contract Documents, and visual inspection of the installed material.

**d. Synthetic Sediment Barriers.** Provide synthetic sediment barrier materials such as Geo-Ridge Permeable Berm™, Triangular Silt Dike™ or equivalent. The Stormwater Compliance Engineer will consider an equivalent of the brand names specified. Provide the Engineer with a complete description, literature, test reports, etc. on the proposed equivalent.

The Engineer will accept the synthetic sediment barrier based on brand name and visual inspection of the installed material.

**e. Filter Sock.** Provide burlap or synthetic mesh bags, coarse aggregate, wood chips, compost or other permeable filler material to slow and filter stormwater runoff. Use only coarse aggregate filler for curb inlet protection.

The Engineer will accept filter socks and filler material based on visual inspection and compliance with requirements in the SWPPP.

### 901.3 CONSTRUCTION REQUIREMENTS

**a. General.** Take all measures necessary to prevent erosion and pollution on the project and project related borrow areas.

Assume responsibility for inspection and maintenance of all erosion and sediment control measures within the project limits, whether originally implemented by the Contractor, KDOT, or a third party. Obtain information regarding the SWPPP and active BMPs from the Area Engineer. Maintenance or removal of BMPs not installed by the Contractor may be considered Extra Work (**subsection 104.6**) unless addressed by other items of the contract (e.g. sediment removal).

If the contract does not include temporary erosion and pollution control bid items, and such work is required, items will be added as provided for in **subsection 104.8**.

Use KDOT's Temporary Erosion Control Manual and standard plan sheets or approved alternate reference documents as a guide for the design, installation and maintenance of temporary erosion control best management practices (BMPs.).

Alternate BMP references include:

- EPA – Stormwater Menu of BMPs (<http://cfpub.epa.gov/npdes/stormwater/menuofbmps>)
- Mn/DOT – Erosion and Sediment Control Pocketbook Guide (<http://www.dot.state.mn.us/environment/pdf/erosion-sediment-control-handbook.pdf>)
- NDOR – Construction Stormwater Pocket Guide (<http://www.transportation.nebraska.gov/environment/guides/Const-Strmwtr-Pocket%20Guide.pdf>)
- Additional reference material available on KDOT's internet website (<http://www.ksdot.org/burconsmain/Connections/swppp.asp>).

Include all relevant portions of referenced documents (whether KDOT or other) and the referenced standard plan sheets with the project SWPPP. Install erosion control devices according to the approved erosion control site plan, prior to, or simultaneously with the clearing and grubbing operations. Install devices to establish a perimeter control of the project in areas where it is anticipated that storm water runoff will leave the project. Do not perform grading until erosion control devices are in place and approved by the Engineer.

Update the erosion control site plan as work progresses to show changes due to revisions in work schedules or sequence of construction, or as directed by the Engineer. Update the site map to reflect erosion control devices that have been installed or removed.

Unless requested in writing from the Contractor, and approved in writing by the Engineer, or specified otherwise in the Contract Documents, do not exceed 750,000 square feet of surface area of erodible earth material

per equipment spread at one time. The Engineer will limit the surface area of erodible earth material exposed by clearing and grubbing, excavation, borrow (within right-of-way) and embankment operations. Limit the exposed erodible earth material according to the capability and progress, and in keeping with the approved schedule.

Areas will not count toward the 750,000 square feet limit, when the following conditions are met:

For areas that will not be disturbed again due to project phasing:

- Finish grade the completed area;
- Stabilize and maintain stabilization according to **SECTION 901**; and
- Do not disturb the area again without a written request from the Contractor and written approval from the Engineer;

For areas that will be disturbed again due to project phasing:

- Rough grade; and
- Stabilize and maintain stabilization according to **SECTION 901**.

**DO NOT** clear and grub areas unless work will actively be performed in the exposed area (or portions of the exposed area) within 7 calendar days on exposed steep slope areas (40% or greater) or within 14 calendar days for all other exposed areas. If areas are cleared and grubbed and not finished graded, not part of project phasing and no meaningful work toward the completion of the bid item is performed within the exposed area (or portions of the exposed area) for 7 calendar days on exposed steep slope areas (40% or greater) or 14 calendar days for all other exposed areas, stabilize and maintain stabilization at these exposed areas according to **SECTION 901** at no cost to KDOT.

If on-site or state-furnished off-site borrow areas are to be excavated below the ground water elevation, construct a temporary berm around the borrow area to prevent storm water runoff from entering the excavated area.

Restrict construction operations in rivers, streams and other water impoundments to those areas that must be entered for the construction of temporary or permanent structures. When no longer required, promptly remove all falsework, piling, temporary crossings and other obstructions caused by the construction.

Where practical, do not store equipment or materials (including soil stockpiles) within 50 feet of rivers, streams or other surface waters. Avoid storing equipment or materials (including soil stockpiles) in flowlines of ditches or other drainage courses. Where such storage is necessary, obtain the Engineer's written approval and include in the project SWPPP appropriate best management practices for the storage area.

Do not ford live streams with construction equipment.

Install and maintain temporary erosion and pollution control devices as shown in the Contract Documents, the SWPPP and as directed by the Engineer.

Implement temporary erosion and pollution control with best management practices (BMPs) as described in the SWPPP. As a minimum, perform the following erosion control actions:

- Use temporary erosion and pollution control actions to control erosion resulting from the construction of the project;
- Use temporary erosion and pollution control measures to prevent contamination of adjacent streams or other watercourses, lakes, ponds or other areas of water impoundment;
- Coordinate temporary erosion and pollution control measures with the construction of permanent erosion control features to provide continuous erosion control;
- Schedule construction of drainage structures and permanent erosion control features as soon as practical; and
- Immediately initiate placement of appropriate erosion control Best Management Practices (BMPs) in any exposed steep slope areas (40% or greater) where construction activities have permanently or temporarily ceased, and will not resume for a period exceeding 7 calendar days. For vegetative cover areas, in addition to seeding, watering, mulching, and any other required activities related to the planting and establishment of vegetation, utilize other appropriate erosion control practices such as geotextiles or erosion control mats.
- Immediately initiate temporary stabilization on areas that have been disturbed after construction activities have permanently ceased on that portion of the project site. Immediately initiate temporary stabilization measures on areas that have been disturbed after construction activities have temporarily ceased on that portion of the project site if construction activities will not resume for a period exceeding 14 calendar days. Temporary stabilization may include temporary seeding, geotextiles, mulches or other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further

construction activities take place to re-disturb the area. This stabilization must be completed within 21 calendar days.

Notify the Engineer in writing within 24 hours of any chemical, sewage or other material spill which is required to be reported to the KDHE under part 10 of the NPDES permit. The notification shall include at a minimum the material spilled, location of the spill, and a description of containment or remediation actions taken. This notice to the Engineer does not relieve the Contractor of responsibility to report to the KDHE or to any other agency.

If temporary erosion and pollution control is not implemented and maintained according to the approved SWPPP, this specification or the NPDES permit, the Area/Metro Engineer may suspend all or part of the work on the project until conditions are brought into compliance, as determined by the Area/Metro Engineer.

KDOT will not issue the Notice of Acceptance; **subsection 105.16**, until all necessary maintenance, corrective actions, removal of unnecessary devices and temporary stabilization is completed for the project. Failure to complete this work could result in liquidated damages, **subsection 108.8**.

All SWPPP related documentation including the original SWPPP, all revisions/amendments, and inspection reports shall be retained by the Engineer upon Acceptance of the project.

#### **b. Permits.**

(1) Projects with 1 acre or more of erodible surface. KDOT will obtain a National Pollutant Discharge Elimination System (NPDES) permit for the project. The Contractor shall accept full responsibility, coverage, and liability for the permit, along with KDOT. Within 10 business days after notice of the award of contract or within any time extension the Bureau Chief of Construction and Materials has granted for completion of documents the Bidding Proposal Form requires, complete, sign and return to KDOT the KDHE form "REQUEST FOR JOINT OWNER/OPERATOR". A blank copy of the form is attached. The Secretary will not sign the contract until the Contractor has returned the completed, signed "REQUEST FOR JOINT OWNER/OPERATOR". If the Contractor fails to complete, sign, and return the "REQUEST FOR JOINT OWNER/OPERATOR" within the required time, the Secretary will cancel the award of contract as provided in **subsection 103.5**. KDOT will submit the completed form to KDHE for authorization. After approved by KDHE, copies will be distributed to KDOT and the Contractor. This joint permit does not cover Contractor plant sites and Contractor-Furnished borrow and waste sites adjacent to, or in the near vicinity of the project.

When Contractor-furnished borrow or plant sites are outside the project limits, obtain all required permits and clearances required for compliance, **subsection 107.2**. Provide copies of all such permits to the Engineer.

(2) Projects with less than 1 acre of erodible surface. Neither a NPDES permit nor a Storm Water Pollution Prevention Plan (SWPPP) in **subsection 901.3c**. will be required.

Even though a Project SWPPP is not required, the Contractor is required to comply with the concepts for erosion and pollution control and utilize appropriate best management practices to minimize stormwater pollution.

The Contractor will not be required to complete Inspection and Maintenance Reports, provide a Water Pollution Control Manager, or participate in a stormwater erosion control pre-construction conference.

**c. Project Storm Water Pollution Prevention Plan (SWPPP).** Before the preconstruction conference, submit to the Area/Metro Engineer a minimum of 3 original copies of the SWPPP. No contract work may begin until the Area/Metro Engineer has approved the SWPPP.

Design the SWPPP to comply with the NPDES permit for the Project. At a minimum, the project SWPPP shall include:

- the SWPPP Inspection and Maintenance Report Forms (KDOT Form No. 247);
- The planned sequence of major construction activities;
- the Contractor's Erosion Control Site Plan;
- the SWPPP Contractor Certification Form 246. The Contractor and all subcontractors are required to certify that they understand the terms and conditions of the general NPDES permit. The Engineer will provide the SWPPP Certification Form (Form No. 246), or it can be found on the KDOT Internet;
- a copy of the Project Notice of Intent Form (NOI) for Stormwater Runoff from Construction Activities. (obtained from KDOT);
- A copy of the "Request for Joint Owner/Operator" form approved by KDHE;

- An acknowledgement that State and Local requirements have been included in the SWPPP. All applicable permits (Corps of Engineers, Department of Agriculture, etc.) should be reviewed for special conditions affecting stormwater pollution control;
- Training certificates for designated Water Pollution Control Manager and Environmental Inspectors for the Project;
- Reference Contract Documents pertaining to temporary erosion and water pollution control. KDOT standard specifications, contractual special provisions and the policy on Storm Water Discharges can be found on the KDOT Internet at [www.ksdot.org](http://www.ksdot.org);
- A detailed description of Best Management Practices (BMPs) which will be used one or more times at the site for erosion and sediment control. BMPs shall be designed, installed and maintained to:
  - Control stormwater volume and velocity within the site;
  - Control stormwater discharges;
  - Minimize the amount of soil exposed during construction activity;
  - Minimize the disturbance of steep slopes (slopes of 40% or greater);
  - Minimize sediment discharges from the site;
  - Control discharges from sediment or soil stockpiles;
  - Minimize the generation of dust;
  - Minimize off-site tracking of soils;
  - Provide storm drain inlet protection for inlets down gradient of sites not fully stabilized or where construction will soon be started;
- Additional BMPs to minimize or eliminate contamination of stormwater runoff shall be designed, installed, implemented and maintained to:
  - Minimize discharge of pollutants from equipment and vehicle washing;
  - Minimize the exposure of construction waste, trash, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater;
  - Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures;
  - BMPs in this category include but are not limited to:
    - Waste management including trash containers and regular site cleanup for proper disposal of solid waste such as scrap material, product/material shipping waste, food containers and cups;
    - Containers and proper disposal for waste paints, solvents, and cleaning compounds;
    - Portable toilets for proper disposal of sanitary waste;
    - Storage for construction materials away from drainage courses and low areas.

**d. Water Pollution Control Manager.** Designate a Water Pollution Control Manager (WPCM) who shall visit the Project during normal work hours on a frequent basis and in no instance less than once per week until all physical work is complete and the Engineer issues the Notice of Acceptance or a partial Notice of Acceptance. The required 180 day observation period for pavement markings is not considered to be physical work. The WPCM shall thoroughly review the project and SWPPP documentation during these site visits to verify the Contractor's compliance with this specification and with the NPDES permit. In addition, the WPCM shall:

- Have the authority to supervise all work performed by the Contractor and subcontractors that involves stormwater requirements or affects stormwater compliance;
- Have the responsibility to order Contractor employees and subcontractors to take appropriate corrective action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements and to order or recommend such other actions or sanctions as necessary to meet stormwater requirements;
- Be familiar with the Project SWPPP;
- Be responsible for updating the Project SWPPP and site maps to accurately reflect the BMPs in use on the Project;
- Be the point of contact for KDOT regarding stormwater compliance;
- Attend the stormwater erosion control pre-construction conference and other stormwater erosion control conferences required according to **subsection 901.3e.**;

- Have completed KDOT's Environmental Inspector Training and Environmental Manager Training programs within the twelve months prior to beginning construction activities. These certifications shall be maintained for the duration of the project;
- Review and sign SWPPP inspection reports within 3 days after receiving such reports, acknowledging awareness of any deficiencies and ensuring the correction of all deficiencies.
- Maintain and monitor an active email account capable of receiving electronic communications including inspection reports, photos and other documents relevant to stormwater compliance.

The WPCM may, when practical, perform SWPPP Inspections according to **subsection 901.3t**.

Immediately notify the Engineer in writing if the designated WPCM is replaced. The replacement WPCM shall comply with the above requirements, except that they shall have completed the training requirements within the twelve months prior to assuming WPCM duties. The notification shall include training certificates and contact information for the replacement WPCM.

**e. Stormwater Erosion Control Conferences.** Each Project shall have a stormwater erosion control pre-construction conference before the start of construction activities.

KDOT and the Contractor shall also hold stormwater erosion control conferences before the start of each major phase of construction and before the winter shutdown period begins.

These conferences shall be attended by the KDOT Area/Metro Engineer, the WPCM, and Environmental Inspector(s) for the Project, and any erosion control subcontractor(s). The attendance sheet and minutes of the conference will be kept in the SWPPP notebook.

**f. Temporary Berms.** Use temporary berms to divert storm runoff to stabilized slopes or temporary slope drains. Construct temporary berms as shown in the Contract Documents. Compact the berms until no further consolidation is observed, using a dozer track, grader wheel or other equipment.

**g. Temporary Slope Drains.** Use temporary slope drains to carry storm runoff down fill slopes and cut backslopes. Construct the temporary slope drains as shown in the Contract Documents.

**h. Silt Fence.** Install silt fence for slope barriers or ditch checks as shown in the SWPPP. When conditions warrant, supplement the temporary silt fence with a support fence. Reduce the post spacing and drive the posts further in the ground in low and soft, swampy areas. Remove and dispose of sediment deposits when the deposit approaches  $\frac{1}{2}$  the height of the silt fence.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

**i. Biodegradable Logs.** Install biodegradable for slope barriers or ditch checks as shown in the SWPPP. Remove and dispose of sediment deposits when the deposit approaches  $\frac{1}{2}$  the height of the biodegradable log.

Straw logs shall not be used for ditch checks or inlet sediment barriers.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

**j. Synthetic Sediment Barriers.** Install synthetic sediment barriers for slope barriers or ditch checks as shown in the SWPPP. Remove and dispose of sediment deposits when the deposit approaches  $\frac{1}{2}$  the height of the barrier.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

**k. Filter Sock.** Install filter socks with approved filler as shown in the SWPPP. Use coarse aggregate filler for protection of curb and gutter inlets.

**l. Temporary Ditch Checks Rock.** Use rock to construct temporary rock ditch checks as shown in the SWPPP or the Contract Documents. When deposits reach approximately  $\frac{1}{2}$  the height of the temporary rock ditch check, remove and dispose of the accumulated sediment.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

**m. Temporary Inlet Sediment Barrier.** Use any of the materials listed in the Contract Documents or the SWPPP to construct temporary inlet sediment barriers. Prefabricated protection devices or alternative systems may be used with the Engineer's approval. Provide the Engineer with a complete description, literature, test reports, etc. on the proposed system. Submit this information with the SWPPP documents for approval under **subsection 901.3.c**.

When temporary silt fence is used, reduce post spacing and drive the posts further into the ground in low and soft, swampy areas. Remove and dispose of the sediment when deposits reach approximately  $\frac{1}{3}$  the height of the silt fence.

When synthetic sediment barriers are used, remove and dispose of the sediment when deposits reach approximately  $\frac{1}{2}$  the height of the barrier.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

**n. Temporary Sediment Basins.** Before constructing a temporary sediment basin, clear the area of all vegetation. Construct the temporary sediment basin with a wide cross-section and a minimum grade, as shown in the Contract Documents. Dispose of excess excavated material.

Remove and dispose of the accumulated sediment when deposits reach approximately 20% of the basin capacity.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

**o. Temporary Stream Crossing.**

(1) General. When the Contractor's operations require a temporary stream crossing, and one is not shown in the Contract Documents, the Contractor may install the crossing at no cost to KDOT. Comply with all applicable rules and regulations, obtain all required permits and provide copies of all permits to the Field Engineer. An unanticipated stream crossing may require a permit from the Corps of Engineers if work is performed within Waters of the U.S. and/or a stream obstruction permit from the Kansas Department of Agriculture if the crossing is in a designated stream.

Before beginning work in the streambed, record existing stream channel elevations.

Construct temporary stream crossings as shown in the Contract Documents or the SWPPP.

Place 1 pipe buried 6 inches into the stream bottom, in the lowest point of the channel to allow the passage of aquatic organisms, with additional pipes placed along the remainder of the stream channel bottom such that ordinary high water (OHW) flows designated in the Contract Documents shall flow through the pipes without overtopping the crossing. If the OHW is not designated in the Contract Documents, the Engineer will determine the OHW. The OHW means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Submit to the Engineer for review and approval, the design flow calculations to determine the number and diameter of pipes required. A minimum 12 inch diameter pipe is required.

Place pipes parallel to flow.

Cover pipes with a minimum of 12 inches of clean aggregate fill.

Dispose of sediment on the project at locations approved by the Engineer. When necessary, stabilize the material as directed by the Engineer.

(2) Maintenance. At a minimum, perform weekly inspections to verify that drift and debris are not blocking the flow of water through the pipes. Perform additional inspections, as needed. Remove drift and debris when blockage occurs. Repair eroded areas, if necessary, to prevent washout and allow passage of flows.

(3) Removal. Remove the temporary crossing and all materials as soon as no longer needed. Restore the disturbed bed and bank area of the stream channel to its pre-existing elevations.

**p. Temporary Fertilizer, Seed and Mulch.** Repair any rills, gullies or other erosion damage prior to seeding. Prepare the seedbed, fertilize, seed and mulch according to **DIVISION 900**. Apply the temporary fertilizer, seed and mulch at the rates shown in the Contract Documents. Apply water to seeded and mulched areas when approved by the Stormwater Compliance Engineer to promote the establishment of vegetation in critical areas.

**q. Soil Erosion Mix.** Prepare a smooth, weed-free and debris-free area, and broadcast or hydro-seed the soil erosion mix seed over the prepared area. Lightly hand rake broadcasted seed before placement of the erosion control.

Only use the soil erosion mix under erosion control blankets.

There are no seasonal placement limitations for the soil erosion mix.

**r. Temporary Seeding.** "Temporary Seeding" is to be used only if the project has less than 1 acre of erodible surface. If this item is used: fertilize, seed, and mulch all exposed erodible earth.

Prepare the seedbed, fertilize, seed and mulch according to **DIVISION 900**. Apply the temporary fertilizer, seed and mulch at the rates shown in the Contract Documents.

**s. Erosion Control.** After seeding according to **DIVISION 900**, install erosion control according to the manufacturer's requirements for edge and junction overlaps, staple size and staple pattern. Installation areas shall be free of erosion rills, rocks, clods or other debris that may cause "tenting" or otherwise inhibit uniform contact.

When shown in the plans, install erosion control materials within the time allowed for temporary stabilization under **subsection 901.3a**.

Use Erosion Control materials for the stabilization of all steep slopes (2.5:1 or steeper) where construction activities have permanently or temporarily ceased and will not resume for a period exceeding 7 calendar days

(1) Areas with Erosion Control (Class I). Place the Erosion Control (Class I) on slopes according to the SWPPP. Do not mulch over the Erosion Control (Class I).

(2) Areas with Erosion Control (Class II). Place the Erosion Control (Class II) in channels, ditches or areas of concentrated flow according to the SWPPP.

Do not cover erosion control materials with soil or mulch unless recommended by the manufacturer and approved by the Engineer.

Apply water to completed erosion control installations when approved by the Stormwater Compliance Engineer to promote the establishment of vegetation in critical areas.

**t. Geotextile (Erosion Control).** Install geotextile (erosion control) as a temporary measure to protect steep slopes and other areas where timely installation of the permanent (aggregate or concrete) slope protection is impractical. The installation area should be free of rills, rocks, clods or other debris. Secure geotextile to the ground with staples or other similarly effective methods to achieve uniform contact with minimal "tenting."

Remove geotextile prior to placement of the permanent slope protection.

Install geotextile (erosion control) as a temporary measure to protect temporary slopes, soil stockpiles and other areas where mulching or other means of stabilization is impractical. Preparation of the slopes and the method of securing the fabric shall be as approved by the Area Engineer.

**u. SWPPP Inspections.** SWPPP Inspections shall be performed by Environmental Inspectors. Environmental Inspectors shall have completed KDOT's Environmental Inspector Training and maintain a current certification while performing SWPPP Inspections.

Where practical, the WPCM may also serve as the Contractor's Environmental Inspector.

Include with the project SWPPP documents proof of certification for Environmental Inspectors who will be performing SWPPP Inspections on the project.

KDOT's Environmental Inspector and the Contractor's Environmental Inspector shall perform a joint inspection of the temporary erosion and pollution control devices every 14 days during normal work hours and within 24 hours of a rainfall event of ½ inch or more. Inspections shall continue at this frequency until all physical work is complete and the Engineer issues the Notice of Acceptance or a partial Notice of Acceptance. The required 180 day observation period for pavement markings is not considered to be physical work.

Document the SWPPP inspections on KDOT Form 247, (SWPPP Inspection and Maintenance Report). The KDOT and Contractor Environmental Inspectors shall each sign the report.

Submit completed copies of KDOT Form 247 to the Area/Metro Engineer and Contractor's WPCM within 24 hours after an inspection has been made.

The WPCM shall review and sign the report within 3 calendar days of receiving the completed inspection report. The WPCM's signature acknowledges awareness of all reported deficiencies and corrective actions required to be taken within 7 calendar days of the inspection.



**v. Maintenance and Removal of Temporary Erosion and Pollution Control Devices.** Maintain the effectiveness of the temporary erosion and pollution control devices as long as required to contain sediment runoff. Monitor temporary erosion and pollution control devices daily.

Any deficiencies noted during a SWPPP Inspection shall be corrected by the Contractor within 7 days of the inspection despite weather conditions that make it difficult (but not impossible) to perform corrections. The Contractor shall receive no additional time for making corrections on the basis of weather unless it is physically impossible due to flooding or frozen ground conditions for the Contractor to complete the corrections within the 7 days allowed. No additional time will be granted to complete corrective actions unless approved by the Stormwater Compliance Engineer.

Should flooding or frozen ground conditions make it impossible to perform corrections within the allowed time, notify the Area/Metro Engineer and the Stormwater Compliance Engineer within 48 hours of the event. Within 3 days of the notification, submit in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; and a schedule for implementation of any measures to be taken to prevent or mitigate the delay. Include with the submittal any relevant documentation supporting the claim that the delay is due to flooding or frozen ground conditions and that best efforts were made to complete the required corrections and to minimize any delay to the extent possible. No additional time will be granted to submit the required information unless approved in writing by the Stormwater Compliance Engineer.

The obligation to conduct formal inspections and complete an associated report every 14 days and within 24 hours of a rainfall event of ½ inch or more does not limit or otherwise modify the Contractor's obligation to monitor and maintain temporary erosion and pollution control devices daily.

Remove the temporary devices according to the SWPPP or when directed by the Engineer. After removing the temporary erosion and pollution control devices, remove and dispose of the silt accumulation. Grade, fertilize, seed and mulch any bare areas.

When temporary erosion and pollution control devices are installed according to the Contract Documents, SWPPP, or as approved by the Engineer and such devices are no longer effective because of deterioration or functional incapacity, payment will be made for replacement of these devices, as directed by the Engineer. No payment will be made for replacing temporary erosion control devices that become ineffective because of improper installation, lack of maintenance or the Contractor's failure to pursue timely installation of permanent erosion control devices according to the Contract Documents.

**w. Stormwater Compliance Disincentive Assessment.** If the Contractor fails to follow a requirements in this Special Provision, Part 7 of the Kansas General Permit (KGP), titled "Stormwater Pollution Prevention Plan Requirements and Guidelines", Part 10 of the KGP, titled "General Requirements of this Permit", or Part 11 of the KGP titled "Standard Conditions" (or equivalent provisions in the event section numbers change in any future Permit), the Contractor shall be liable for a disincentive assessment(s). The disincentive assessment(s) charged and owing shall be:

- One thousand five hundred dollars (\$1,500.00) per violation per day for each calendar day, or part thereof, that the Contractor fails to follow each requirement for days 1-10.
- Two thousand five hundred dollars (\$2,500.00) per violation per day for each calendar day, or part thereof, that the Contractor fails to follow each requirement for days 11-20.
- Three thousand five hundred dollars (\$3,500.00) per violation per day for each calendar day, or part thereof, that the Contractor fails to follow each requirement for days 21 and continuing.

The per day disincentive assessment applies to each requirement in this Special Provision, Part 7, Part 10, and Part 11 for which the Contractor fails to comply. Thus, multiple disincentive assessments may be imposed on the same day. The failure to follow a requirement in this Special Provision and the KGP includes, without limitation, the failure to install, operate, or maintain BMP's in accordance with the SWPPP as well as the improper installation, operation, or maintenance of such BMP's. Failure to follow a requirement in this Special Provision and the KGP could result in the Engineer determining this as Unacceptable Work according to **subsection 105.5d.**, and cause the Engineer to remedy this unacceptable work according to **subsection 105.5f.**

If the Contractor fails to have a properly trained and certified WPCM assigned to the Project as required under **subsection 901.3d.**, the Contractor shall be liable for a disincentive assessment of Seven hundred fifty-dollars (\$750.00) for each day of construction on which the WPCM has not received KDOT's Environmental Manager Training, fails to have a current certification, or both.

If the Contractor personnel performing the joint inspection of the temporary erosion and pollution control devices required under **subsection 901.3u**, fails to have completed KDOT's Environmental Inspector Training, fails to have a current certification, or both, the Contractor shall be liable for a disincentive assessment of:

- Seven hundred fifty-dollars (\$750.00) for each inspection undertaken by a person that fails to have the required training and current certification, and
- Seven hundred fifty-dollars (\$750.00) per person for each 14 day period that the person fails to have the required training and current certification.

If the Contractor fails to have a WPCM, a Contractor Environmental Inspector, or both at the stormwater erosion control pre-construction conference as required under **subsection 901.3e**, the Contractor shall be liable for a disincentive assessment of Seven hundred fifty-dollars (\$750.00) for each person not present.

If the Contractor Environmental Inspector on the project fails to provide a copy of the inspection report to the Area/Metro Engineer and the WPCM within 24 hours of each stormwater inspection required under **subsection 901.3u**, and the KGP, the Contractor shall be liable for a disincentive assessment of Seven hundred fifty dollars (\$750.00) per day for each day the inspection report has not been provided to the Area/Metro Engineer and the WPCM within 24 hours of the inspection.

If the Contractor Environmental Inspector on the project fails to use the most current SWPPP Inspection and Maintenance Report Forms (KDOT Form No. 247) as required under **subsection 901.3u**, the Contractor shall be liable for a disincentive assessment of Seven hundred fifty dollars (\$750.00) for each report submitted on a form other than Form No. 247.

If the Contractor fails to notify the Engineer of spills as required under **subsection 901.3a**, the Contractor shall be liable for a disincentive assessment of:

- Seven hundred fifty-dollars (\$750.00) the first day the notification is late; and
- Seven hundred fifty-dollars (\$750.00) for each 14 day period that passes without the information being provided

The Engineer will deduct and withhold from contract funds the Stormwater Compliance Disincentive Assessment under **subsection 901.3w**. The assessments are to be computed in the same manner as damages under **subsection 108.8**, (Liquidated Damages and Disincentive Assessments) except calendar days include Sundays, Holidays and the Winter Holiday Period. If contract funds are insufficient, the Contractor shall pay KDOT the balance owed. If the Contractor fails to pay KDOT the amount owed within 10 days after demand from KDOT, the Contractor shall be considered in breach of contract **under subsection 108.9**.

The disincentive assessments under **subsection 901.3w** are in addition to federal and state statutory penalties and fines that are allowed against the Contractor under the Clean Water Act and other environmental laws for violations of those laws. See also **subsection 901.3x**.

**x. Penalties and Fines.** Nothing in **SECTION 901** prevents KDHE, EPA, or both from assessing penalties and fines against the Contractor because of the Contractor's failure to comply with applicable laws, regulations, ordinances, NPDES permit, other permits, the SWPPP, governmental administrative compliance orders or corrective orders for the Project, or a combination thereof.

Nothing in this **SECTION 901** prevents KDHE, EPA, or both from assessing penalties and fines against the Contractor because of the Contractor's failure to comply with an administrative claims settlement or consent decree that governs KDOT projects and that is included in the Proposal Form or that is added to the contract by change order as "Extra Work", **subsection 104.6**.

The Contractor understands that penalties/fines may be imposed against KDOT, the Contractor, or both because of "shared" responsibility/liability under applicable environmental law, regulations, ordinances; the NPDES permit, other permits, the SWPPP, administrative corrective action orders, administrative claims settlements, consent decrees, legal judgments or a combination thereof. The Contractor shall have no claim that such shared responsibility/liability voids the Contractor's liability for disincentive assessments under **subsection 901.3w** or for penalties/fines under **subsection 901.3x**.

#### **901.4 MEASUREMENT AND PAYMENT**

The Engineer will measure temporary berms, temporary slope drains, silt fence, biodegradable logs, synthetic sediment barriers, and filter sock by the linear foot. The Engineer will measure the top of the device from point to point or each bend/turn in the device, add them together from beginning to end to come up with the total

liner feet per device. The length installed up side slopes beyond a point level from the top of the device in the ditch bottom will not be measured for payment.

The Engineer will measure temporary rock ditch checks by the cubic yard.

The Engineer will measure each temporary inlet sediment barrier.

The Engineer will measure each temporary stream crossing when shown as a bid item in the contract.

The Engineer will measure temporary sediment basins by the cubic yard excavated to construct the basin.

The Engineer will measure sediment removal by the cubic yard of sediment removed. If the quantity of sediment removal is approximately 50 cubic yards or greater in one location, the Engineer may pay for sediment removal by force account according to **subsection 109.3** rather than paying the contract set price for the bid item "Sediment Removal". Whether paid as a set price or by force account, the Engineer will not pay for a quantity or cost that is incurred because of the Contractor's failure to install seed timely or failure to remove sediment timely as **SECTION 109** requires.

The Engineer will measure temporary fertilizer, temporary seed and soil erosion mix by the pound.

The Engineer will measure "Temporary Seeding" as a lump sum; no measurement of area is made.

The Engineer will measure erosion control by the square yard.

The Engineer will measure temporary mulching by the ton.

The Engineer will measure water used for establishment of vegetation by the M Gallon using calibrated tanks or meters.

The Engineer will measure geotextile (erosion control) by the square yard.

The Engineer will measure each SWPPP inspection performed in compliance with this specification.

The Engineer will measure the each Water Pollution Control Manager (WPCM). Each is defined as each calendar week (Sunday-Saturday) that the Contractor provides a WPCM according to **subsection 109.3.d**. Each week will be measured only once, regardless of the number of site visits or time spent performing WPCM duties for that week.

The Engineer will measure SWPPP design for payment as a lump sum upon the Area Engineer's approval. All revisions or updates to the SWPPP shall be subsidiary.

The Engineer will assess penalties under the bid item "Stormwater Compliance Disincentive Assessment" by the Lump Sum.

Payment for the various items of temporary erosion and pollution control is full compensation for the specified work. Contract unit prices will govern regardless of overruns or underruns of the estimated quantity unless specifically stated otherwise.

Payment for "Sediment Removal (Set Price)" at the contract set unit prices is full compensation for the specified work.

The Engineer will not measure for separate payment any erosion control devices or seeding installed in Contractor-Furnished borrows and waste locations or plant site locations outside the project limits.



REQUEST FOR JOINT OWNER/OPERATOR

For Authorization to Discharge Stormwater Runoff from Construction Activity
In accordance with Kansas Water Pollution Control General Permit No. S-MCST-0312-1
Under the National Pollutant Discharge Elimination System

Use this form only when stormwater discharge and control responsibility for the entire permitted area will be jointly held by adding an owner/operator to an existing Kansas Department of Transportation (KDOT) authorized permit.

Submission of this RJOO to KDHE does not relinquish the KDOT's authorization to discharge stormwater runoff from construction activity at the site described herein.

TO BE COMPLETED BY THE ADDED OWNER/OPERATOR:
I hereby confirm that the Added Owner/Operator identified below shares joint stormwater discharge and operational control responsibility with KDOT and accepts being added to the below identified authorization under the Kansas Stormwater Runoff from Construction Activities General Permit.
The ADDED OWNER/OPERATOR is:
Owner or Operator's Name: Contact Name:
Company Name: Company Name:
Owner or Operator's Phone: Contact Phone:
Mailing Address: Mailing Address:
City: State: Zip Code: City: State: Zip Code:
I certify that I have personally examined and am familiar with the information described herein.
Added Owner/Operator's Signature: Date:
Name (typed or printed): Title:
TO BE COMPLETED BY KDOT
As original Owner/Operator for the authorized project indicated below, I hereby certify the above Added Owner/Operator meets the General Permit definition of Owner/Operator and agree to the shared responsibilities with the Added Owner/Operator under the General Permit and continuance of my responsibilities thereunder.
Name of Project:
Address: City: County: State: KS Zip Code:
Kansas Permit No. Federal Permit No.
Permittee Signature: Date:
Permittee Name: Title: Phone Number:

Submit the RJOO with original signatures to:
Kansas Department of Health and Environment
Bureau of Water, Industrial Programs Section
1000 SW Jackson, Suite 420
Topeka, KS 66612 - 1367

Authorized: [ ] Y; [ ] N
Reviewer Date

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, EDITION 2007**

**CONSENT DECREE**

The following information is a result of the United States of America v. Kansas Department of Transportation.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	13-cv-04069
	)	<u>CONSENT DECREE</u>
	)	
KANSAS DEPARTMENT OF	)	
TRANSPORTATION,	)	
	)	
Defendant.	)	
_____	)	

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Whereas, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant Kansas Department of Transportation violated Sections 301 and 402 of the Clean Water Act (“Act”), 33 U.S.C. §§ 1311 and 1342, regarding the discharge of stormwater in violation of Defendant’s NPDES permit. The alleged claims include Defendant violated the terms of its construction stormwater NPDES permit at the U.S. Highway 59, U.S. Highway 69, and K-18 road construction projects.

Whereas, Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

Whereas, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. Venue lies in this District pursuant 33 U.S.C. § 1319, and 28 U.S.C. §§ 1391 and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and



Defendant is doing business as a state agency in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendant shall provide a copy of this Consent Decree to all employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

## III. DEFINITIONS

6. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act

or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Area/Metro Engineer” shall mean a KDOT Engineer who provides professional administrative management and direction of all phases of construction, maintenance, fiscal and personnel matters in a designated Geographic Area. They conduct periodic visits to active construction sites to investigate, conduct reviews and provide advice. They represent KDOT in communication with cities, counties and local citizens.
- b. “BMPs” shall mean Best Management Practices used to control pollutants in stormwater runoff, as described in the Permit.
- c. “Complaint” shall mean the complaint filed by the United States in this action;
- d. “Clean Water Act” or “the Act” shall mean 33 U.S.C. §§ 1251-1387.
- e. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto listed in Section XXII;
- f. “Construction Activities” shall mean the disturbance of soils associated with clearing, grading, excavation activities or other construction-related activities.
- g. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

h. “Defendant” or “KDOT” shall mean the Kansas Department of Transportation;

i. District Construction Engineer shall mean the KDOT engineer that provides district-wide oversight, technical expertise and quality assurance of district construction projects, materials inspections, and geotechnical operations. They oversee transportation planning, operations, construction, inspection, maintenance, safety, environmental, and administrative and support activities. Their responsibilities are performed under general supervision by the District Engineer.

j. District Maintenance Engineer shall mean the KDOT engineer that plans, directs and coordinates maintenance and repair operations through professional engineering and administrative direction throughout a District. They have extensive latitude for exercising professional judgment and taking appropriate action with general guidelines provided by the District Engineer.

k. District Mentor shall mean the KDOT person who provides technical and administrative support to field construction personnel responsible for construction inspection activities throughout a District. They are responsible to evaluate the adequacy of construction inspection activities on projects within a District, prepares project inspection evaluation reports, recommends solutions to address inadequacies found during project visits and participate in the development and presentation of training activities to address the inadequacies.

l. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

m. “Effective Date” shall have the definition provided in Section XIV.

- n. “Headquarters/District Staff Inspection” shall mean a Project oversight inspection for stormwater pollution management activities undertaken by one or more of the following engineers or senior technicians at KDOT Headquarters or at a KDOT District Office in a District other than the District in which the Project being inspected is located: Headquarters Staff includes KDOT’s Stormwater Compliance Manager, Field Construction Engineer from the Bureau of Construction and Materials, Assistant Bureau Chief of Construction and Materials, and Engineers or Environmental Scientists from KDOT’s Environmental Services Section. District Staff includes Assistant District Engineers (District Construction Engineer, District Maintenance Engineer or a person who acts as both) and Area/Metro Engineers.
- o. “Notice of Acceptance” shall mean formal notice by KDOT to a Contractor that the Contractor has completed all physical work on the Project and that the Contractor is relieved of responsibility to perform physical construction on the Project (except construction arising out of any breach of warranty, breach of guaranty, latent defects, fraud or misrepresentation discovered after acceptance), repair damages to the Project caused by Acts of God or third parties, and maintain the Project.
- p. “Oversight Inspector” shall mean the KDOT employee or Third-Party Consultant who conducts Headquarters/District Staff Inspections/Third-Party Inspections pursuant to Paragraph 21 of this Decree.
- q. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- r. “Parties” shall mean the United States and Defendant;

s. “Permit” or “Applicable Permit” shall mean the Kansas Water Pollution Control and National Pollution Discharge Elimination System Stormwater Runoff from Construction Activities General Permit or a project specific stormwater permit issued to KDOT.

t. “Project” shall mean any location in the State of Kansas where KDOT is required to obtain an NPDES construction stormwater permit.

u. “Responsible Contractor” shall mean the general contractor charged with the supervision or completion of construction at a Project. If there is no general contractor for a Project, the Responsible Contractor shall be each contractor retained by KDOT responsible for activities at the Project.

v. “Section” shall mean a portion of this Decree identified by a roman numeral;

w. “State” shall mean the State of Kansas.

x. “SWPPP” shall mean the project specific Stormwater Pollution Prevention Plan required by the Permit.

y. “United States” shall mean the United States of America, acting on behalf of EPA;

z. “U.S. Highway 59 Road Construction Project” shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R104357, south of the City of Lawrence, Kansas.

aa. “U.S. Highway 69 ‘Project 91’ Road Construction Project” shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R101766, north of the City of Pleasanton, Kansas.

bb. U.S. Highway 69 ‘Project 92’ Road Construction Project’ shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R102649, north of the City of Pleasanton, Kansas.

cc. “Kansas Highway 18 (or “K-18”) Road Construction Project: shall mean the road construction project resulting in land disturbance, covered by NPDES Permit KS-R106629, southwest of the City of Manhattan, Kansas.

#### IV. CIVIL PENALTY

7. Within 30 Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$477,500 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

8. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant, following the effective date of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Kansas, 500 State Avenue, Suite 360, Kansas City, Kansas 66101, (913) 551-6730. At the time of payment, Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Kansas Department of Transportation, and shall reference the civil action number and DOJ case number 90-5-1-1-10420, to the United States in accordance with Section XIII of this Decree (Notices); by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov); and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

and

Dr. Delia Garcia  
U.S. EPA Region 7  
Water, Wetlands & Pesticides Division  
11201 Renner Blvd.  
Lenexa, KS 66219

9. Payments to be Made Solely by KDOT. KDOT shall pay the civil penalty called for in the prior Paragraph, out of its own funds and shall not seek payments, reimbursement, indemnification or insurance coverage for this civil penalty from any contractor, third party or agency of the United States including, but not limited to, the Federal Highway Administration (“FHWA”). KDOT shall not seek any litigation-related costs or its attorney fees (both private and internal), in this action or in anticipation of this action from any agency of the United States including, but not limited to, the FHWA. If any such costs or fees have previously been paid by reimbursement or otherwise from the FHWA to KDOT, these costs or fees shall be refunded by KDOT to FHWA.

10. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000.00 per Day for each Day that the payment is late.

## V. COMPLIANCE REQUIREMENTS

11. Defendant shall complete the requirements of Paragraphs 12 through 25 pursuant to this Consent Decree.

12. Designation of Stormwater Compliance Manager. KDOT shall designate one individual as its KDOT Stormwater Compliance Manager not later than thirty (30) days after the effective date of this Decree. The KDOT Stormwater Compliance Manger shall have overall responsibility for the KDOT stormwater compliance program and shall:

- a. Be a KDOT employee;
- b. Have training and knowledge regarding stormwater requirements through CPESC Certification or Certification through a course that meets or exceeds the requirements set out in Appendix B and field experience with NPDES Permits and SWPPPs;
- c. Oversee the development and maintenance of the Stormwater Training Program, quarterly stormwater bulletins, list of Projects, and annual reports;
- d. Oversee stormwater compliance at all KDOT Projects to ensure compliance with applicable NPDES Permits, SWPPPs and this Decree, including, where appropriate, directing additional inspections at Projects that are experiencing problems with achieving Permit compliance;
- e. Be responsible for providing all written reports required under Section VI;
- f. Oversee the third party inspections required under Paragraph 21; and
- g. Serve as KDOT's point of contact for the State and EPA for KDOT-wide compliance matters related to stormwater requirements.



13. Designation of Area Engineer/Metro Engineer. For each Project, KDOT shall designate an Area Engineer or Metro Engineer to serve as the Project's stormwater compliance manager prior to commencement of construction or within sixty (60) days of the effective date of the Consent Decree, whichever is later. Each Project stormwater compliance manager shall:

- a. Be a KDOT employee;
- b. Complete timely stormwater training pursuant to Paragraphs 15 and 16;
- c. Be authorized by KDOT and have the responsibility to supervise all work necessary to meet stormwater requirements at the Project, including work performed by contractors, and sub-contractors;
- d. Be authorized by KDOT and have the responsibility to order employees, contractors and sub-contractors to take appropriate responsive action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements, and to order or recommend such other actions as necessary to meet stormwater requirements;
- e. Be familiar with the Project SWPPP and have the authority and responsibility to update the Project SWPPP;
- f. Be responsible for reviewing and signing all inspection reports within 3 days after receiving such reports; and
- g. Be the point of contact for the Project for regulatory officials, KDOT employees, contractors, sub-contractors and consultants regarding stormwater requirements.

14. Designation of Environmental Inspectors. Before commencement of Construction Activities at any Project, KDOT shall designate one or more KDOT employee(s) or consultant(s) working directly for KDOT as an Environmental Inspector for that Project. At ongoing Projects, KDOT will designate one or more KDOT employee(s) or consultant(s) working directly for KDOT as an Environmental Inspector for that Project within thirty (30) days of the effective date of this Decree. The Environmental Inspector shall report to the Project Area/Metro Engineer or the KDOT Stormwater Compliance Manager. The Environmental Inspector shall have responsibility for conducting inspections required by the Permit and by this Consent Decree and furnishing the inspection reports to the Project Area/Metro Engineer or to KDOT Stormwater Compliance Manager.

15. Stormwater Training Program. All Area/Metro Engineers, and Environmental and Oversight Inspectors employed by KDOT shall attend a training course presented by a third party or by KDOT, within one hundred twenty (120) days of the effective date of this Decree. KDOT shall submit to EPA a certification that the course meets or exceeds the requirements set out in Appendices B and C respectively for Area/Metro Engineers, and Environmental and Oversight Inspectors. EPA reserves the right to reject the certification as non-compliant with the Appendix B and C requirements as applicable. Such rejection shall be subject to the Dispute Resolution Clause of this Decree.

16. During the term of this Decree, all Area/Metro Engineers newly employed by KDOT or attaining those positions after the effective date of this Decree shall comply with the training requirements described in Paragraph 15 within sixty (60) days of assuming that position, or within the deadlines set forth in Paragraph 15, whichever is later. If a training

program is not available in that initial 60 day period, Area/Metro Engineers hired or assigned to that position after the effective date of the Decree may comply with the training requirements of Paragraph 15 through review of videotapes and materials from the initial training session or through computer-based training modules that KDOT certifies meet or exceed the requirements set out in Appendix B and C as applicable. However, any such Area/Metro Engineers shall attend the full training course within one year of assuming this new position. Within 120 days following the effective date of this Decree, all Environmental and Oversight Inspectors shall comply with the training requirements described in Paragraph 15. After the initial 120 days following the effective date of this Decree, an Inspector may not be assigned to a Project to perform stormwater related activities (i.e. operate as an Environmental or Oversight Inspector) until the Inspector has had the training required by this Paragraph or a current Certification. All Area/Metro Engineers and Environmental and Oversight Inspectors shall retrain in a stormwater management course that meets or exceeds the requirements of Appendices B and C as applicable every two years. KDOT shall retain records documenting the training status of each Area/Metro Engineer and Environmental and Oversight Inspector.

17. KDOT shall prepare and distribute to its Area/Metro Engineers, Environmental and Oversight Inspectors, Responsible Contractors and other interested personnel a quarterly stormwater bulletin that highlights new developments in the field of stormwater management, recent stormwater management problems encountered by KDOT in the field, or other similar topics that will act to inform the reader of current issues in stormwater management. The bulletin shall be at least two pages in length, and can be distributed either in paper or electronic format. A copy of each bulletin shall be provided to EPA.

18. KDOT shall require as a term of its contracts for all Projects let from March 1, 2013 on, that prior to initiating any Construction Activities at a Project the Responsible Contractor, shall designate a “Water Pollution Control Manager (“WPCM”)” who shall visit the Project on a frequent basis and in no instance less than once per week until the submittal of the Notice of Acceptance. For projects let after September 1, 2013, the contract shall also require that the WPCM shall attend, in the twelve months prior to the beginning of Construction Activities on any Project, stormwater management training, presented by KDOT or presented by a third party, that meets the minimum requirements of Appendix D and is approved by KDOT.

The WPCM shall:

a. Be authorized by the Responsible Contractor and have the authority to supervise all work performed by the Responsible Contractor and sub-contractors that involves stormwater requirements or affects stormwater compliance;

b. Be authorized by the Responsible Contractor and have the responsibility to order Responsible Contractor employees and subcontractors to take appropriate corrective action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements and to order or recommend such other actions or sanctions as necessary to meet stormwater requirements;

c. Be familiar with the Project SWPPP and the Contractor representative responsible for updating the SWPPP;

d. Be the point of contact for KDOT regarding stormwater compliance;

e. Be responsible for reviewing inspection reports within 3 days after receiving such reports, acknowledging awareness of any deficiencies and ensuring the correction of all deficiencies; and

f. Attend the storm water erosion control preconstruction conference.

19. Inspection Procedures. KDOT shall establish within forty-five days of the effective date of this Decree a set of inspection procedures for all Projects. KDOT shall memorialize these inspection procedures in a written guidance or similar document, and distribute the document to its field offices state wide. The procedures shall be binding on KDOT and all Responsible Contractors working for KDOT at all Projects. At a minimum, the inspection procedures shall include the following:

a. each Project shall have a storm water erosion control preconstruction conference before the start of construction activities. This preconstruction conference shall be attended by the KDOT Area/Metro Engineer, the WPCM, Environmental Inspector(s) for the Project, and any erosion control subcontractor (s). Minutes of the conference shall be kept.

b. each Project shall be inspected in accordance with the Permit by a trained Environmental Inspector;

c. a copy of the inspection report shall be provided to the Area/Metro Engineer and the WPCM within 24 hours of each stormwater inspection;

d. KDOT shall take action to ensure that all deficiencies identified during the inspection are corrected as soon as possible and no later than seven days after the inspection.

20. Inspection Forms. KDOT will use the inspection form found in Appendix A to the Decree. This form may be amended prior to the termination of the Decree without amending the Decree based on written agreement between the United States and KDOT.

21. KDOT Headquarters/District Inspections/Third-Party Inspections. For all Projects that disturb five acres or more of soil and that are located in an environmentally sensitive area, KDOT shall designate an independent Oversight Inspector who inspects for compliance with the Permit. For all Projects that disturb three hundred acres or more of soil and that are located in an environmentally sensitive area, the Oversight Inspector shall be a qualified third-party consultant retained by KDOT. For all Projects that disturb at least one hundred acres but less than three hundred acres of soil and that are located in an environmentally sensitive area, the Oversight Inspector, shall be from KDOT Headquarters Inspection Staff or a qualified third-party consultant retained by KDOT. For all Projects that disturb at least five acres but less than one hundred acres of soil and that are located in an environmentally sensitive area, the Oversight Inspector shall be from KDOT Headquarters Inspection Staff, KDOT District Inspection Staff, or a qualified third-party consultant retained by KDOT. KDOT District Staff shall not conduct oversight inspection in the same District in which they are employed. Such oversight inspections shall occur at least once every 60 days during any period where there is active construction at a Project and shall be unannounced. If material deficiencies are found, the independent Oversight Inspector will conduct a follow-up inspection within 14 days. The Oversight Inspector shall

provide to the KDOT Area/Metro Engineer and the Responsible Contractor within twenty-four (24) hours of each inspection written findings and recommendations that contain at least the information on the form described in Paragraph 20. The Oversight Inspector shall also provide any follow-up written report if changes to the SWPPP or BMPs are necessary within seven (7) days of each inspection. A copy of all such reports shall be provided to the KDOT Stormwater Compliance Manager, Area/Metro Engineer and Responsible Contractor and maintained in the file with the SWPPP located at the site, and shall be available for review by EPA during any inspection of the Project. KDOT and Responsible Contractor shall implement all recommendations by the Oversight Inspector, unless infeasible. If KDOT and Responsible Contractor reject a recommendation as infeasible, KDOT shall place in its files on the job site a written description by either the Area/Metro Engineer or the KDOT Stormwater Compliance Manager of why the recommendation(s) is infeasible. The written description shall include an explanation of why the recommendation was not necessary to protect water quality or comply with the permit, or an explanation that KDOT has developed an alternative solution that is feasible that protects water quality and complies with the Permit. If the Area/Metro Engineer makes an initial determination that a recommendation is infeasible, he/she will obtain the approval of the KDOT Stormwater Compliance Manager to not implement the recommendation. If such approval is given, the Area/Metro Engineer will place in its files on the job site the written approval of the KDOT Stormwater Compliance Manager. For purposes of this section, “environmentally sensitive area” means any area which would be directly impacted by stormwater discharges from the Project, and which is designated critical habitat for any listed threatened or endangered species, or which contains an immediate downstream water body that

is listed as impaired for sediment by the Kansas Department of Health and Environment under Section 303(d) of the CWA.

22. If KDOT believes that a third party inspection would result in no significant environmental benefits at a Project, KDOT may seek a waiver of this requirement from EPA. The grant or denial of this waiver by EPA is in the sole discretion of EPA and is not subject to the dispute resolution provisions of this Decree.

23. Within 30 days following the effective date of this Decree, KDOT shall provide Plaintiff by electronic mail to the addresses specified in Paragraph 67 (Notices) a list of all Projects. By the 15th day of every March and September, KDOT shall provide Plaintiff with notice by electronic mail at the addresses specified in Paragraph 67 (Notices) of any updates to this list of Projects. Each notice required by this Paragraph shall include the following information for each Project: (i) KDOT's Permit number and name of the Project, if available; (ii) the name of the Responsible Contractor(s) and their permit number; (iii) the location of the Project including the physical description designated by a beginning and ending point in relationship to a county or city jurisdictional boundary or route/junction designation or combination thereof that enables a person to find the Project; (iv) Area/Metro Engineer (include telephone number and/or e-mail); (v) the best estimate for the start date of Construction Activities; and (vi) the best estimate for the completion of Construction Activities.

24. KDOT and its contractors shall comply with the Permit including the BMPs and SWPPP requirements of the Permit at each Project.

25. Permits. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely



and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

#### VI. REPORTING REQUIREMENTS

26. KDOT must provide to the Chief, Water Enforcement Branch in Paragraph 67 (Notices), written reports anytime the spill or emergency reporting provisions of the Permit(s) are triggered, requiring KDOT to report an event to the Kansas Department of Health and Environment. Each written report shall include the name of the Project at which the noncompliance occurred. Certification requirements described in Paragraph 29 do not apply to endangerment reports.

27. KDOT shall submit to EPA an annual report, to be submitted by March 30th, summarizing all actions taken to comply with the terms of this Consent Decree and certifying KDOT's compliance with all requirements of this Consent Decree in the previous year. This summary certification shall address compliance with Paragraphs 12 through 25. As part of the report, KDOT shall submit to EPA a statement identifying each known violation of any of the terms of the Permit or this Consent Decree by KDOT or its contractor(s). This report shall be submitted either in hard copy or electronically on a compact disc.

28. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

29. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

30. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

31. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### VII. STIPULATED PENALTIES

32. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any schedule approved under this Decree, according to all applicable require-

ments of this Decree and within the specified time schedules established by or approved under this Decree.

33. Stipulated Penalty Amounts. If EPA determines that KDOT has failed to comply fully and timely with the requirements of this Decree, KDOT shall pay stipulated penalties in the following amounts:

- a. for failure to designate or maintain a Stormwater Compliance Manager in accordance with Paragraph 12 (Stormwater Compliance Manager) - \$750 for each 14 day period;
- b. for failure to designate or maintain an Area/Metro Engineer in accordance with Paragraph 13 (Area/Metro Engineer) - \$750 for each 14 day period;
- c. for failure to ensure, pursuant to Paragraph 14 (Environmental Inspector), that any inspection required under the Permit performed at a Project was performed by an Environmental or Oversight Inspector trained in accordance with the requirements of Paragraphs 14 (Environmental Inspector) and Paragraph 15 (Stormwater Training Program) - \$750.00 for each such inspection;
- d. for failure to timely train Area/Metro Engineers and Environmental and Oversight Inspectors in accordance with Paragraphs 15 (Stormwater Training) and 16 (Training Time Periods) - \$750.00 per person for each missed deadline. This \$750.00 per person violation shall continue to accrue for each 14 day period that the person fails to timely receive the applicable training;

- e. for failure to timely prepare and distribute a quarterly stormwater bulletin in material compliance with Paragraph 17 (Quarterly Bulletin)- a onetime stipulated penalty of \$3,000 per quarterly bulletin;
- f. for failure to ensure that each Project has a properly trained WPCM assigned to a Project in accordance with the requirements of Paragraph 18 (WPCM) by obtaining documentation of WPCM's certification- \$750.00 per day of construction;
- g. for failure to create written inspection procedures within 45 days of the effective date of the Decree in accordance with Paragraph 19 (Inspection Procedures) - \$750.00 per day;
- h. for failure to comply with the requirements of Paragraph 19 (Inspection Procedures) (a) (Preconstruction Conference), (b) (Environmental Inspector), (c) (Inspection Report to Area/Metro Engineer by 24 hours) - \$750.00 per failure;
- i. for failure to utilize the approved inspection form per Paragraph 20 (Inspection Form) - \$750.00 per failure;
- j. for failure to comply with a requirement of Paragraph 21 (Oversight Inspections) - \$2,000.00 per inspection not timely performed;
- k. for failure to provide written notices in accordance with Paragraph 23 (Project List) - \$250.00 per day;
- l. for failure to follow the requirements set forth in Paragraph 24 relating to Part 7 (Stormwater Pollution Prevention Plan Requirements and

Guidelines), Part 10 (General Requirements of this Permit) and Part 11 (Standard Conditions) of the Permit, or equivalent provisions in the event section numbers change in any future Permit, - \$1,500.00 per violation per day for days 1 - 10; \$2,500.00 per violation per day for days 11 - 20; and, \$3,500.00 per violation per day for days 21 and continuing;

m. for failure to provide a report in accordance with Paragraph 26 (Spill and Emergency Notification) - \$750.00 for the first day the report is late or deficient, and then an additional \$750.00 for every fourteen (14) day period that passes without the information being provided;

n. for failure to timely submit an Annual Report that complies with Paragraph 27 (Annual Report) - \$750.00 per day; and

o. regarding the reporting provisions of subparagraph m and n above, penalties regarding the qualitative sufficiency of the report shall accrue for sixty (60) days regardless of notice from the United States, but will then be stayed until notice of insufficiency is made to Defendant by the United States and at that time they shall continue to accrue until the report is made sufficient.

34. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

35. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

36. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

37. Stipulated penalties shall continue to accrue as provided in Paragraph 33 (Stipulated Penalty Amounts), during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

38. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

39. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in

28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

40. Nothing in this Consent Decree prevents KDOT from collecting stipulated penalties from KDOT's Contractor for the Contractor's failure to comply with its contractual obligations to KDOT. KDOT shall not seek payments, reimbursement, indemnification or insurance coverage for any stipulated penalty from any agency of the United States including, but not limited to, the Federal Highway Administration ("FHWA").

41. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of Section 301 or 402 of the Act, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### VIII. FORCE MAJEURE

42. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of

any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

43. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to Chief, Water Enforcement Branch, within 72 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

44. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are



affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

45. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

46. If Defendant elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 42 and 43, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### IX. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as

a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 7 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

49. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

50. The United States shall serve its Statement of Position within 45 Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

51. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

53. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 49 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 49, Defendant shall bear the burden of

demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

54. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 37. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

#### X. INFORMATION COLLECTION AND RETENTION

55. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

56. Until three years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to Defendant's performance of its obligations under this Consent Decree or to Defendant's Contractor's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph. Defendant may collect and retain all Contractor documentation rather than requiring Defendant's Contractor to retain the documentation for the prescribed period.

57. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall retain documents pursuant to KDOT's document retention policy. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, records, or other information created

or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

58. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

59. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

60. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

61. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 60. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 60.

62. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendant’s violations, Defendant shall not assert, and may not maintain, any defense or claim based upon

the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60 of this Section.

63. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1311 and 1342 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

64. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

65. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

## XII. COSTS

66. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

## XIII. NOTICES

67. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

To the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-10420

Chief, Water Enforcement Branch  
Water, Wetlands & Pesticides Division  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, Kansas 66219

Kristen Nazar  
Assistant Regional Counsel  
U.S. EPA, Region 7  
11201 Renner Blvd.  
Lenexa, KS 66219

Susan Bruce  
U.S. EPA  
Office for Enforcement and Compliance Assurance



Water Enforcement Division  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

To Defendant:

Carmen D. Tucker Bakarich  
Staff Attorney & Manager of Contract Claims  
Kansas Department of Transportation  
Eisenhower State Office Bldg  
700 SW Harrison, 6th Floor  
Topeka, KS 66603

68. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

69. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

70. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

71. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

## XVI. MODIFICATION

72. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

73. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 53 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## XVII. TERMINATION

74. No sooner than 4 years after effective date of this Decree, KDOT may request the United States' consent to termination of this Decree. In seeking such consent, KDOT shall demonstrate that:

- i. KDOT has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- ii. As of the date KDOT provides any notice or request to terminate this Decree, EPA has not provided KDOT with any Notice of Dispute invoking the Dispute Resolution provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution);  
and
- iii. No enforcement action under this Decree is pending.

75. The United States shall notify KDOT in writing within 30 days of receiving any request to terminate by KDOT whether the United States does or does not object to the request. If the United States agrees, then the parties shall jointly file a motion to terminate with the Court. If the United States objects to such request, the parties will work together for a period of at least 30 days in an effort to informally resolve any disputes. The Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.

76. The Court may terminate this Decree 60 days after KDOT has filed with the Court a motion to terminate the Decree and served a copy of that motion upon the United States, so long as either (1) KDOT's motion to terminate the Decree is accompanied by a true and correct copy of the United States' notice that it does not object to the termination or (2) KDOT prevails in any motion it files to terminate the decree.

77. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

78. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section IX of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 49 (Formal Dispute Resolution) of Section IX, until 7 days after service of its Request for Termination.

### XVIII. PUBLIC PARTICIPATION

79. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

### XIX. SIGNATORIES/SERVICE

80. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

81. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

### XX. INTEGRATION

82. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the

Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### XXI. FINAL JUDGMENT

83. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

#### XXII. APPENDICES

84. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the Approved Inspection Form;

“Appendix B” is the Area/Metro Engineer Training;

“Appendix C” is the Environmental Inspector Training;

“Appendix D” is the Contractor Training;

Dated and entered this 5<sup>th</sup> day of September, 2013.

s/Kathryn H. Vratil  
KATHRYN H. VRATIL  
CHIEF JUDGE, UNITED STATES DISTRICT  
District of Kansas

FOR PLAINTIFF UNITED STATES OF AMERICA:

THOMAS A. MARIANI, Jr.  
Deputy Section Chief  
Environmental Enforcement Section

/s/ David L. Dain

DAVID L. DAIN  
Senior Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
999 18<sup>th</sup> Street  
South Terrace, Suite 370  
Denver, CO 80202  
David.Dain@usdoj.gov  
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BARRY R. GRISSOM  
United States Attorney  
District of Kansas

/s/ Emily Metzger

EMILY METZGER  
Assistant United States Attorney  
301 North Main Street  
Wichita, Kansas 67212  
(316) 269-6481  
Emily.Metzger@usdoj.gov  
Kansas Supreme Court Number 10750

/s/ Karl Brooks  
KARL BROOKS  
Regional Administrator  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard.  
Lenexa, Kansas 66219

/s/ David Cozad  
DAVID COZAD  
Regional Counsel  
U.S. Environmental Protection Agency  
U.S. EPA, Region 7  
11201 Renner Boulevard.  
Lenexa, Kansas 66219

/s/ Susan Shenkman  
SUSAN SHINKMAN  
Director  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460



FOR DEFENDANT KANSAS DEPARTMENT OF TRANSPORTATION:

/s/ Michael King  
MICHAEL S. KING  
Kansas Secretary of Transportation

/s/ Carmen D. Tucker Bakarich  
CARMEN D. TUCKER BAKARICH  
Staff Attorney & Manager of Contract Claims  
Kansas Department of Transportation  
Eisenhower State Office Building  
700 SW Harrison, 6th Floor  
Topeka, KS 66603

Appendix A

## Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

Project #: \_\_\_\_\_ Permit #: \_\_\_\_\_  
 Area / Metro Engineer: \_\_\_\_\_ Water Pollution Control  
 Manager: \_\_\_\_\_  
 Date of last 0.5 inch rainfall \_\_\_\_\_  
 or greater: \_\_\_\_\_ Amount / date of last rainfall: \_\_\_\_\_  
 Inspection Type: \_\_\_\_\_ Inspection Date: \_\_\_\_\_

### CONTENTS

FORM ID #	DESCRIPTION	REQUIRED?
247A	GENERAL ISSUES	YES
247B	SITE EROSION	YES
247C	SEDIMENT CONTROLS	YES
247D	STREAM CROSSINGS	
247E	CONST. ENTRANCES	YES
247F	SEDIMENT BASINS	

FORM ID #	DESCRIPTION	REQUIRED?
247G	MAINTENANCE SUMMARY	YES
247H	CORRECTIVE ACTIONS	YES

### CERTIFICATION STATEMENT

" I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for known violations."

TITLE	PRINT NAME	CERT ID #	SIGNATURE	DATE
KDOT INSP.				
CONT. INSP.				
AREA ENG				

WPCM\*

\*WPCM Signature acknowledges awareness of all deficiencies noted. All required maintenance and corrective actions are to be completed within 7 days of this inspection. Failure to do so will result in the assessment of liquidated damages.

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**General Issues / Housekeeping**

	<b>BMP/Activity</b>	<b>(Yes or No)</b>	<b>Observations / Remarks</b>	<b>Maintenance or Corrective Action Required</b>
1	Are all slopes and disturbed areas not actively being worked properly stabilized?	Yes / No		
2	Are natural resource areas (e.g. streams, wetlands, mature trees) protected with barriers or other BMPs?	Yes / No		
3	Are perimeter controls and barriers adequately installed (keyed into substrate) and maintained?	Yes / No		
4	Are discharge points and receiving waters free of sediment deposits?	Yes / No		
5	Are storm drain inlets properly protected?	Yes / No		
6	Are construction exits preventing sediment form being tracked into the roadway?	Yes / No		
7	Is trash/litter from work areas collected and placed in covered dumpsters?	Yes / No		
8	Are portable toilets available for sanitary waste?	Yes / No		
9	Are washout facilities (e.g. paint, concrete) available, clearly marked, and maintained?	Yes / No		
10	Are equipment fueling, cleaning and maintenance areas free of spills, leaks or other contaminants?	Yes / No		

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**General Issues / Housekeeping**

	<b>BMP/Activity</b>	<b>(Yes or No)</b>	<b>Observations / Remarks</b>	<b>Maintenance or Corrective Action Required</b>
11	Are materials that are potential stormwater contaminants stored inside or under cover?	Yes / No		
12	Are non-stormwater discharges (e.g. wash water, dewatering) properly controlled?	Yes / No		
13	Are SWPPP Site Maps complete and up to date?	Yes / No		
14	Are there any outstanding maintenance items from previous inspections?	Yes / No		
15	Are there any outstanding corrective actions from previous inspections?	Yes / No		
16	Other remarks / observations			

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Open Areas / Erosion Control**

Area	Date Area Disturbed	Date Construction Activity Ceased	Date Area Stabilized	Stabilized With	Condition of Stabilization	Observations / Remarks	Maintenance or Corrective Action Required



**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)**

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
 Storm Water Pollution Prevention Plan  
 Inspection and Maintenance Report**

INSPECTION DATE:

**Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)**

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required



## Kansas Department of Transportation Storm Water Pollution Prevention Plan Inspection and Maintenance Report

INSPECTION DATE:

### Sediment Control Devices (Ditch Checks, Slope Barriers, Inlet Barriers, etc.)

Number the sediment control devices identified in your SWPPP on your site map and list them below (add as many as necessary). Carry a copy of the numbered site map with you during your inspections. This list will assist you to make sure your inspecting all required devices at your site.

Location	Device # (from SWPPP)	Date Installed	Perimeter Control Device? (Yes/No)	Type of Device	Condition of Device	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Temporary Stream Crossing\***

Location	Date Installed	What type of Stream Crossing?	Condition of Stream Crossing	Observations / Remarks	Maintenance or Corrective Action Required	Date Removed

**\*NOTE:** If the crossing has material in or above the stream, only graded rock, quarry-run and/or clean concrete rubble will be permitted for stream crossings. When vehicular access across streams is no longer required, all temporary crossings will be removed and minor stream banks will be stabilized with the crushed stone or concrete rubble.

**Kansas Department of Transportation  
 Storm Water Pollution Prevention Plan  
 Inspection and Maintenance Report**

INSPECTION DATE:

**Construction Entrances**

Location	Date Installed	Does sediment get tracked onto the road?	Does traffic use the entrance to leave the site?	Condition of the entrance	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Sediment Basins**

Location	Date Installed	Size of Basin (CUYDS)	% Full	Condition of side slopes	Evidence of overtopping?	Condition of outfall?	Observations / Remarks	Maintenance or Corrective Action Required

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Maintenance Required**

Location	Maintenance Required - Description and Responsible Person	Date Maintenance Completed	Inspector

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Maintenance Required**

Location	Maintenance Required - Description and Responsible Person	Date Maintenance Completed	Inspector

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Maintenance Required**

Location	Maintenance Required - Description and Responsible Person	Date Maintenance Completed	Inspector

**Kansas Department of Transportation  
Storm Water Pollution Prevention Plan  
Inspection and Maintenance Report**

INSPECTION DATE:

**Corrective Actions Required**

Description and Location of BMP Deficiency	Corrective Action Required - Description	Responsible Person	Date Action Completed	Inspector



## Appendix B - Area/Metro Engineer Training

Minimum of 8 hours (classroom). This training module shall contain information on the following:

- History of Clean Water Act and past violations;
- Role of KDOT, KDHE, EPA, and Contractor in storm water management for projects in Kansas ;
- How construction projects can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- KDOT Storm Water related Standard Plans and Specifications and BMP Manual;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- How to review and approve a SWPPP based on KDOT and EPA requirements and guidance manuals; and
- BMP inspection and maintenance program.
- Consent Decree Requirements pertaining to KDOT's Stormwater Compliance Program:
  - i. Designation of trained personnel, roles and responsibilities (KDOT Stormwater Compliance Manager, Area/Metro Engineer, Environmental Inspectors, Responsible Contractor, Water Pollution Control Manager)
  - ii. Pre-construction Conference
  - iii. Use of Proper Inspection Form and Corrective Action Log
  - iv. Role of Third Party Inspections
  - v. Inspection Procedures required by Consent Decree

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). KDOT shall maintain copies of all such certifications.

## Appendix C - Environmental Inspector Training

Minimum of 8 hours (classroom). This training module shall contain information on the following:

- History of Clean Water Act and past violations;
- Role of KDOT, KDHE, EPA, and Contractor in storm water management for projects in Kansas;
- How construction projects can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- KDOT Storm Water related Standard Plans and Specifications and BMP Manual;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- Basic SWPPP requirements based on KDOT and EPA documents and guidance manuals;
- How to inspect a construction project to ensure BMPs are properly installed and maintained; and
- Consent Decree Requirements pertaining to KDOT's Stormwater Compliance Program:
  - i. Designation of trained personnel, roles and responsibilities (KDOT Stormwater Compliance Manager, Area/Metro Engineer, Environmental Inspectors, Responsible Contractor, Water Pollution Control Manager)
  - ii. Pre-construction Conference
  - iii. Use of Proper Inspection Form and Corrective Action Log
  - iv. Role of Third Party Inspections
  - v. Inspection Procedures required by Consent Decree

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). KDOT shall maintain copies of all such certifications.

## Appendix D - Contractor Training

Minimum of 16 hours of training (classroom and field). This training module shall contain information on the following:

- History of Clean Water Act and past violations;
- Role of KDOT, KDHE, EPA, and Contractor in storm water management for projects in Kansas;
- How construction projects can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- KDOT Storm Water related Standard Plans and Specifications and BMP Manual;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- How to prepare a SWPPP for construction projects in Kansas;
- Inspection, maintenance, and repair program for storm water BMPs;
- Field demonstration of BMP implementation and installation (minimum of 4 hours for field portion of class); and
- Consent Decree Requirements pertaining to KDOT's Stormwater Compliance Program:
  - i. Designation of trained personnel, roles and responsibilities (KDOT Stormwater Compliance Manager, Area/Metro Engineer, Environmental Inspectors, Responsible Contractor, Water Pollution Control Manager)
  - ii. Pre-construction Conference
  - iii. Use of Proper Inspection Form and Corrective Action Log
  - iv. Role of Third Party Inspections

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). The Responsible Contractor shall maintain copies of all such certifications.

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, 2007 EDITION**

**WEIGH-IN-MOTION SYSTEM**

**1.0 DESCRIPTION**

Provide and install a Weigh-In-Motion (WIM) system as specified in the Contract Documents.

**BID ITEM**

Weigh-In-Motion System

**UNITS**

Lump Sum

**2.0 MATERIALS**

**a. General.** Provide a system that meets the requirements of ASTM Standard E1318-09 for a Type I WIM system. Provide the Engineer with information showing that the proposed system has been installed in the U.S. and successfully operated for at least one year.

Provide equipment that is assembled and ready for installation upon delivery.

Provide electronic components of solid-state design with high noise immunity and low power consumption. House electronic components so that they will be protected from vibration and handling during installation and operation, and fully protected against overloads, power surges, static discharge and electrical transients. Use materials not definitely specified but required to be furnished in order to meet this specification of a good commercial quality entirely suitable for this application. Use materials free from defects and imperfections that might affect the serviceability of the finished product. Use standard manufactured products, so that prompt and continuing service and delivery of spare parts may be assured.

(1) Accuracy. Provide a system capable of gathering weight, length, classification and speed data on vehicles operating at normal highway speeds. Meet accuracy requirements for weight, length, and speed as stated in the ASTM Standard.

For vehicle type classification, use the FHWA Scheme-F (13-bin) as shown in Appendix A. Meet this accuracy:

- Less than 10% of all vehicles erroneously classified.
- Less than 10% of Class 9 (3S2) vehicles erroneously classified.

(2) Environment. Provide weight monitoring and data retrieval devices capable of measuring, recording, storing and transmitting traffic data continuously under all conditions of weather, humidity, and temperature likely to exist in the roadside environment in Kansas. Provide field equipment with an operating temperature range of at least -20 to 140°F (-28 to 60°C), up to 95% non-condensing relative humidity. Provide systems capable of withstanding temperatures in the range -40 to 160°F (-40 to 70°C) without suffering permanent damage or significant deterioration.

**b. Vendor/Manufacturers.** Known-acceptable WIM systems are available from the following Vendor/Manufacturers:

Mettler-Toledo Scale  
1900 Polaris Parkway  
Columbus, OH 43240-2020  
(614) 438-4823

IRD, Inc.  
702-43<sup>rd</sup> Street East  
Saskatoon, SK S7K 3T9  
(303) 355-5998

ECM Inc.  
464 Commercial Drive  
Buda, TX 78610  
(512) 295-9752

Hammel Scale Co. Inc.  
1530 N Mosley  
Wichita, KS 67214  
(316) 264-1358

Cardinal Scale Mfg  
203 E. Daugherty  
PO Box 151  
Webb City, MO 64870  
(417) 673-4631

Peek Traffic Corp  
2906 Corporate way  
Palmetto, FL 34221  
(941) 845-1200

Intercomp  
3839 County Road 116  
Medina, MN 55340-8342  
(800) 328-3336

Other systems meeting the requirements of this Special Provision will be evaluated and considered.

**c. Basis of Acceptance.** Any system offered for use under this Special Provision shall be evaluated based on the following information submitted by the Contractor/Vendor:

- Detailed equipment specifications, circulars, drawings and all necessary data which describes in detail the equipment proposed for use under this Special Provision
- A listing of any discrepancies between the proposed equipment capabilities and the capabilities specified.
- Normal life expectancy of sensor arrays, recorders and associated equipment.
- A list of parts needing periodic replacement, including their normal life expectancy and the itemized costs.
- The address where the proposed equipment will be produced or serviced.
- The manufacturer shall have been in operation for a period of at least 3 years and have a facility adequate for and devoted, at least in part, to the manufacturing of traffic weighing systems.

**d. Technical.** Provide all equipment necessary to weigh and record on six lanes of mainline traffic with 12 individual wheel paths and classify and record traffic on the adjacent ramps. At minimum provide the following:

- Sensors to weigh on six lanes total; three lanes each direction separated by center median barrier and inside shoulders.
- Sensors to classify on three adjacent ramps: two northbound exit ramps and one southbound entrance ramp.
- Off-scale sensing
- Other sensors as required by the manufacturer for operation.
- 1 recorder with sufficient memory to store 45 days of classification as well as 10,000,000 vehicle records
- Roadside equipment case for environmental protection of the recorder
- Communication devices necessary to operate the recorder as specified in **subsection 2.0f.(5)**.
- All necessary connectors and cables to construct a complete operational system.

**e. System Components.**

(1) IN-PAVEMENT SENSORS. Provide Weight Sensors that withstand the shock loads normally encountered under a loaded truck traveling at 80 mph (130kph), when mounted according to the manufacturer's instructions. Provide sensors capable of supporting a static load of 30,000 lbs (130kN) without suffering permanent damage.

Provide production model sensors. When requested, provide accuracy data on the proposed sensors collected independently of the Vendor or Manufacturer.

(2) DATA COLLECTION DEVICE. Provide the electronics sub-system for axle weighing and vehicle classification capable of monitoring weight sensor signals from six lanes with 12 individual wheel paths and class sensors from the adjacent ramps. Equip the sub-system with sufficient memory to store 45 days of classification along with 10,000,000 vehicle records.

(3) EQUIPMENT CASE. Provide a housing suitable for permanent installation that provides the necessary protection and environment for the electronic system components. Provide a switched light and a convenience outlet for the use of repair personnel protected by a circuit breaker for the incoming AC lines. Equip with a lock and provide two keys.

Provide AC power and a cellular IP Modem connection to this housing.

**f. Software.**

(1) Recorder Status.

- User programmable factors shall include an initial calibration factor and other parameters required for setting-up the system such as site identification, time and date, sensor configuration, etc.
- Mode of operation and parameters for data processing and storage shall be user-programmable. Include options to: weigh all vehicles, weigh heavy vehicles while classifying light vehicles, classify all vehicles without recording weight.
- Suspend or resume monitoring of traffic and implementation of any self-calibration facility upon receipt of appropriate user instructions.
- Diagnostic check of system operation and performance shall include, as a minimum, checks for low battery power, axle sensor failure, data consistency between sensors, telemetry errors, and condition of stored data.
- The recorder status items shall include:

<u>Item</u>	<u>Minimum Characters</u>
• Station Identification	10
• Recording Interval	2
• Start Date and Time	6 each
• End Date and Time	6 each
• Current Date and Time	6
• Battery Condition (Voltage)	3
• Recording Configuration	As necessary
• Detector Operation	As necessary
• Data from the most recent vehicle	

- If self-calibration is a feature of this equipment, the self-calibration algorithm will change the factor based on a sample of a minimum of 150 trucks. Each adjustment may be a maximum of one percentage point toward the new factor. Each adjustment will be logged in the data record, including date, time, lane number, calculated factor, and the factor as implemented. In binned data modes, self-calibration adjustments shall only be permitted at the end of a recording period.
- Make provisions for input of all system operating parameters on-site and via a remote, telemetric connection. Both on-site and telemetric connections shall permit the same control of the system. The communications parameters for the telemetric connection need be accessible only on-site.

(2) Individual Vehicle Report. Store individual vehicle data such that individual vehicle records in the FHWA Individual Vehicle Record (Z variant) format may be generated as a text file. This format is shown in Attachment #2.

The individual vehicle weight data reports shall include, but need not be limited to:

- Station Identification
- Lane
- Direction
- Date
- Time
- Individual wheel loads
- Inter-axle spacings
- Vehicle Speed
- Vehicle magnetic length

(3) Summary Reports. Summary Reports shall include all those listed below. Examples of each report are given in the Appendix. These are provided only for clarification, and should not be considered a required, or even suggested, format. Summary reports shall include:

- Total vehicles by hour and by day
- FHWA 13-classes by hour and by day. Include un-classifiable vehicles.
- Summary of vehicles by speed bin and hour.
- Gross vehicle weights by FHWA 13-classes, including overweights.
- Overweights by hour and by day.

(4) Data Files. Data files shall conform to the following:

- Each data file transferred from the recording unit, either via telemetry or on-site, shall uniquely identify the recording unit, site and date in the file data.
- Data for each vehicle shall be filed within one hour of the vehicle passage through the site, and current files shall be available for downloading at any time.

(5) Data Transfer/Communication/Output. All procedures contained within the units which control data measuring, recording, storage, display and data transmission shall be designed to avoid loss of data. Any operator commands which would delete data in memory shall provide a warning and require confirmation before execution. Failure to confirm shall return the program to normal operation with all stored data intact.

Include telemetry capability for control and data transmission over standard cellular IP service. KDOT shall provide a Sierra Wireless GX400 cellular IP device provisioned for use at the site. Data collection equipment must work with this telecommunications device, or the vendor must provide a telecommunications unit for use with the data collection equipment that can be provisioned such that it is compatible with the existing telecommunication contract.

Provide a means of portable data retrieval from the equipment site. This may include memory modules, removable storage, a dedicated retrieval unit, or download to a computer. Clearly define and demonstrate this retrieval. Supply any equipment necessary to implement this retrieval.

(6) System Compatibility. Configure the system so that all vehicle data gathered can be directly transferred to a microcomputer running the most recent version of Microsoft Windows operating system for analysis and further processing. Designate any software supplied for data management or reporting for use on this platform.

Restrictions and Constraints: Identify all restrictions and constraints on the use of the software and programs such as copyrights and licensing terms.

**g. Manuals.** Provide the Engineer with two complete sets of Vendor-supplied manuals. Include: operation of the WIM equipment; maintenance and troubleshooting; and software manuals (and source code, if applicable).

The set shall be contained in individual binders suitable for field and office use and storage. Bind the manuals separately for equipment operations (field work) and data operations (office work.)

Maintenance manuals shall include schematics, circuit diagrams, photographic parts location diagram, parts lists, parts price list, parts lists with cross-reference of all components by manufacturers, and instructions suitable for KDOT technicians to perform services and repairs.

**h. Maintenance and Warranty.**

(1) Maintenance and Technical Support. For continued support from the WIM vendor beyond the initial warranty period, provide the following information

- Maintenance service agreements available with costs.
- Location of nearest authorized repair representative.
- A preventative maintenance plan on system components, including duration and frequency.
- A recommended list of spare parts and costs.

(2) Warranty and Service. Guarantee that the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered. Guarantees that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard industry practice.

Deliver to KDOT a binding warranty form the Vendor/Manufacturer which meets the following requirements.

Guarantee all products delivered against faulty material and workmanship for warranty periods as specified below. If during these warranty periods such faults develop, replace the units or parts affected (including shipping) and install at no cost to KDOT. Supply any accessories, compatible with the rest of the furnished equipment, any trips and/or expenses incurred by the Vendor/Manufacturer or agents necessary to repair the equipment under this warranty at no expense to KDOT.

(a) Weighing Equipment. Guarantee data recorders and all other equipment furnished under this bid item against failure in normal use for a period of one year after testing and formal acceptance of system.

(b) Data Procedures. Guarantee data procedures which store, manipulate, output, and display the data for a period of five years during which time the vendor agrees to provide support and modifications necessary to maintain the continued usefulness of the equipment in the function for which it was originally purchased. Provide to KDOT at no additional costs, all enhancements, modifications and revisions to data procedures made by the manufacturer/supplier within a five-year period starting with formal acceptance. Provide complete user documentation.

### 3.0 CONSTRUCTION REQUIREMENTS

**a. Technical Representative.** Provide a field services technical representative to plan, supervise and guide the above activities, advise during construction of the WIM site, and to supervise the installation of the WIM components.

**b. Power.** Provide AC power Obtain all necessary permits for hookup of these utilities. All incoming connections shall have lightning protection meeting IEEE/NEMA surge protection recommendations. Operate from 120V AC power.

**c. Installation.** Install the WIM System according to the Contract Documents and Manufacturer's recommendations.

Mount the in-pavement sensors so that repair or replacement of all sensors in a lane can be completed within 6 hours, under traffic control.

**d. Testing.** Provide loaded vehicles, as required by the manufacturer, for preliminary testing and calibration of the WIM system at a time agreed upon by the Engineer.

**e. Training.** Define the level and degree of training in a plan for KDOT personnel, and submit the plan to the Engineer for approval. Include maintenance of all Vendor-supplied equipment, operation of the equipment in the field, and software options for data summary and storage.

Provide KDOT personnel with (1) an understanding of all components in the system and their function; (2) knowledge of the system hardware and software and training in system operation and maintenance and (3) training in trouble-shooting, checking, and repair of system for satisfactory operation.

Provide the training during the equipment installation period at a time mutually agreed upon for 2 electronics technicians, field operations training for 2 operators, and software operations for 2 office personnel. A



minimum of 5 days before the training, provide attendees manuals for each segment of training. KDOT will provide a location for training.



















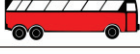














**f. Acceptance.** Certify in writing when the WIM equipment is completely installed at the site and ready for use by KDOT. Affirm KDOT personnel have received sufficient training to operate the system and the keys have been provided to the Engineer. Affirm system meets the calibration requirements of ASTM Standard E1318-09 for a Type I WIM system.

#### **4.0 MEASUREMENT AND PAYMENT**

The Engineer will measure the weigh-in-motion system by the lump sum.

Payment for "Weigh-In-Motion System" at the contract unit prices is full compensation for the specified work.

FIGURE 1-1 FHWA'S 13 VEHICLE CATEGORY CLASSIFICATION

<b>Class 1</b> Motorcycles		<b>Class 7</b> Four or more axle, single unit	
<b>Class 2</b> Passenger cars		<b>Class 8</b> Four or less axle, single trailer	
			
			
			
<b>Class 3</b> Four tire, single unit		<b>Class 9</b> 5-Axle tractor semitrailer	
			
			
<b>Class 4</b> Buses		<b>Class 10</b> Six or more axle, single trailer	
			
			<b>Class 11</b> Five or less axle, multi trailer
<b>Class 5</b> Two axle, six tire, single unit		<b>Class 12</b> Six axle, multi-trailer	
			
		<b>Class 13</b> Seven or more axle, multi-trailer	
<b>Class 6</b> Three axle, single unit			
			
			

Source: Federal Highway Administration.

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, EDITION 2007**

**SPECIAL CONDITIONS – ENVIRONMENTAL**

**NORTHERN LONG-EARED BAT (NLEB)**

Construction activities associated with this project will impact the suitable habitat for the proposed federally endangered Northern Long-Eared Bat (NLEB).

Trees impacted are those 3 inches in diameter and greater, measured at approximately 4 feet above ground level.

When trees greater than 3 inches in diameter are designated for removal on the project, or are to be removed from borrow areas, cut them down by April 2, 2015 with minimal disturbance to the ground. The trees may be cut and stumps left 2 to 3 feet high until complete clearing and grubbing is scheduled.

Immediately remove trees in drainage areas or other problem areas with minimal disturbance to the ground.

Do not cut down or clear and grub any trees greater than 3 inches in diameter between April 2, 2015 and October 31, 2015.

In subsequent years, do not cut down or clear and grub any trees greater than 3 inches between March 1 and October 31.

09-15-14 C&M  
Sept-14 Letting

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, 2007 EDITION**

**WORK SCHEDULE; SPECIFIED CALENDAR COMPLETION DATES; LIQUIDATED DAMAGES; CLEANUP TIME**

**I. PROJECT DEFINED; NATURE OF PROJECT**

The primary operation on Project No. 35-46 KA 3560-01 is the reconstruction of I-35 beginning north of K-7 junction north to Santa Fe in Johnson County.

**II. NOTICE TO PROCEED**

The Engineer will issue the Notice to Proceed no earlier than **MARCH 16, 2015**.

**III. CALENDAR COMPLETION DATE OF NOVEMBER 20, 2015 FOR COMPLETION OF ALL WORK NECESSARY TO OPEN THE PROJECT TO UNRESTRICTED TRAFFIC; LIQUIDATED DAMAGES**

A. On or before **NOVEMBER 20, 2015**, the Contractor shall complete all work necessary to open the project to unrestricted traffic as the Contract Documents require.

B. Liquidated Damages. If the Contractor fails to complete all work necessary to open the project to unrestricted traffic on or before **NOVEMBER 20, 2015**, the Contractor shall be liable for liquidated damages. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **five thousand dollars (\$5,000.00)** per day for each calendar day, or part thereof that the project is not open to unrestricted traffic after **NOVEMBER 20, 2015**.

C. The Engineer may charge damages under both Section III.B and Section IV.B for failure to complete the work timely as required; however, if damages are assessed on the same day, the Engineer will not withhold more than **\$5,000.00** on that day.

**IV. CALENDAR COMPLETION DATE OF DECEMBER 4, 2015 FOR COMPLETION OF ALL WORK INCLUDING PERMANENT SEEDING & CLEANUP; LIQUIDATED DAMAGES**

A. **Subsection 108.4c** of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2007 Ed.) (Standard Specifications) does not apply to this Contract. Instead, the Contractor shall complete the permanent seeding, the remaining, unfinished contract pay items, subsidiary items, incidental work, final cleanup, and final punch list on or before **DECEMBER 4, 2015**.

B. Liquidated Damages. If the permanent seeding, all remaining, unfinished contract pay items, subsidiary items, incidental work, final cleanup, and final punch list is not completed on or before **DECEMBER 4, 2015**, the Contractor shall be liable for liquidated damages. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **two-thousand five hundred dollars (\$2,500.00)** per day for each calendar day, or part thereof that the work specified in Section IV.A remains incomplete.

C. The liquidated damages charged under Section IV.B are in addition to the liquidated damages that may be charged under Section III.B. However, if damages are assessed on the same day, the Engineer will not withhold more than **\$5,000.00** on that day.

D. Liquidated Damages when project is not open to unrestricted traffic. If at any time after **NOVEMBER 20, 2015**, the Contractor obstructs the unrestricted traffic flow in order to complete the remaining, unfinished contract pay items, subsidiary items, incidental work, final cleanup, and final punch list, the Contractor shall be liable for liquidated damages under Section III.B. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **five thousand dollars (\$5,000.00)** per day for each calendar day, or part thereof, that the project is not open to unrestricted traffic after **NOVEMBER 20, 2015**.

09-16-14 C&M (AR)

PROJECT: 35-46 KA 3560-01

COUNTY: JOHNSON

TYPE: Bridge Repair

**BNSF RAILWAY COMPANY  
FLAGGING REQUIREMENTS  
Revision Date 5/15/2014**

FOR THE BENEFIT OF PROSPECTIVE BIDDERS, the Kansas Department of Transportation has obtained the requirements of the Burlington Northern and Santa Fe Railway Co. in relation to the protection of its traffic, the conditions under which such protection will be required, the rates of pay, working hours, and other information relating to services necessary to protect railroad traffic during the construction operations.

**1.1 General:**

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the repair of the **I-35** overpasses at BNSF mainline track MP **21.8** DOT# **663588D**.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project immediately and without prior notice if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project. Railway will have the right to stop construction work on the Project after written notice to both KDOT and Contractor in the event of a material breach of this agreement or terms of the easement agreement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Kansas Department of Transportation  
Coordinating Section  
700 SW Harrison Street  
Topeka, KS 66603 785.296.3531

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify **KDOT** at 785-296-3529 and Railway's Manager Public Projects, telephone number (913) 551-4484 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **DOT #663588D**.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

## 1.2 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project **on Railroad right of way**. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

## 1.3 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Darin Martin at (913) 551-4572 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest track
  - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **KDOT Office** and must not be undertaken until approved in writing by the Railway, and until the **KDOT Office** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by **KDOT** for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.



#### 1.4 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

#### 1.5 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 913-551-4904) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
  - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
  - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
  - **1.05.03c** The cost of flagger services provided by the Railway will be borne by **KDOT's contractor**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger

includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is 45 freight trains per 24-hour period at a timetable speed 60 MPH. For the benefit of the Contractor in the determination of a premium for the insurance coverage as specified in the Proposal and Contract to be carried for and on behalf of the Railroad Company, the approximate ratio of the estimated contract cost of construction to be performed on, over or under the insured railroad's property or within fifty (50) feet of the railroad's tracks on which railroad trains run, to the total contract cost is 0.48%.

## 1.6 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's

representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

## **1.7 Excavation:**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (913-551-4172)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or

protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

### **1.8 Hazardous Waste, Substances and Material Reporting:**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

### **1.9 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



## NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- Passenger on train (C)       Non-employee (N)  
*(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- Contractor/safety sensitive (F)       Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H)       Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

\_\_\_\_\_

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: [Accident-Reporting.Center@BNSF.com](mailto:Accident-Reporting.Center@BNSF.com)

Officer Providing Information:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Employee No.)

\_\_\_\_\_  
(Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM  
DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**

### NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St: \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather: \_\_\_\_\_  
(if non BNSF location)

Mile Post / Line Segment: \_\_\_\_\_

5. Driver's License No (and state) or other ID: \_\_\_\_\_ SSN (required): \_\_\_\_\_

6. Name (last, first, mi): \_\_\_\_\_

7. Address: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

8. Date of Birth: \_\_\_\_\_ and/or Age: \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)

Phone Number: \_\_\_\_\_ Employer: \_\_\_\_\_

9. Injury: \_\_\_\_\_ 10. Body Part: \_\_\_\_\_  
(i.e., Laceration, etc.) (i.e., Hand, etc.)

11. Description of Accident (To include location, action, result, etc.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Treatment:

First Aid Only \_\_\_\_\_

Required Medical Treatment \_\_\_\_\_

Other Medical Treatment \_\_\_\_\_

13. Dr. Name: \_\_\_\_\_ Date: \_\_\_\_\_

14. Dr. Address:

Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

15. Hospital Name: \_\_\_\_\_

16. Hospital Address:

Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

17. Diagnosis: \_\_\_\_\_

EXHIBIT "C-1"

Agreement Between  
BNSF RAILWAY COMPANY  
and the  
CONTRACTOR

Railway File: Overpass Bridge Repair DOT# 663588D  
Agency Project: 35-46 KA-3560-01

\_\_\_\_\_ hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated \_\_\_\_\_, 2014, with **KDOT** for the performance of certain work in connection with the following project: the repair of the I-35 overpasses at BNSF mainline track MP 21.8 DOT# 663588D and the old Sunflower Ammunition Plant Spur, Olathe, Kansas. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **KDOT** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) **RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions for any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE IN ACCORDANCE WITH KANSAS COMPARATIVE FAULT PRINCIPLES. THE LIABILITY ASSUMED BY CONTRACTOR WILL INCLUDE LIABILITY FOR THE ACTS OR OMISSIONS OF RAILWAY EMPLOYEES ASSIGNED TO AND PERFORMING WORK FOR THE PROJECT, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY EMPLOYEES ASSIGNED TO AND PERFORMING WORK FOR THE PROJECT.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable

court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE BY RAILWAY EMPLOYEES ASSIGNED TO AND PERFORMING WORK FOR THIS PROJECT.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

## 2) **TERM**

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

## 3) **INSURANCE**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.



C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway** caused by Contractor, any of Contractor's subcontractors, or Railway employees assigned to and performing work for the Project. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all such claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: [BNSF@certfocus.com](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://www.certfocus.com)

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **4) EXHIBIT "C" CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### **5) TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or

passenger train caused exclusively by the Contractor, its subcontractors, Railroad employees assigned to and performing work for the Project, or a combination thereof which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from such unscheduled train delays, whether caused by Contractor, or subcontractors, or by the Railroad employees assigned to and performing work for the Project. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay are currently \$382.20 per hour per incident. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (Patrick Parker) 817-559-2390 (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BNSF Railway Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Manager Public Projects

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, EDITION 2007**

**Add a new SECTION to DIVISION 800:**

**KANSAS WORK ZONE SAFETY AND MOBILITY PROCESSES AND PROCEDURES**

This project is designated as a Significant Project.

For projects that are designated Significant Projects, assign a trained person at the project level who has the primary responsibility and authority for implementing the Transportation Management Plan (TMP) and other safety and mobility aspects of the project.

A TMP is comprised of strategies that attempt to manage project work zone impacts. These strategies consist of a Temporary Traffic Control Plan (TTCP); a Transportation Operation (TO) plan and a Public Information (PI) plan.

The assigned person must be certified for the duration (from the issuance of the Notice To Proceed to the Notice of Acceptance) of the project.

At the Pre-Construction Meeting, provide to the Engineer:

- the name of the assigned person,
- proof they successfully completed an Advance Work Zone course, ATTSA's Traffic Control Supervisor course or an approved equivalent training course, and
- a 24-hour contact number for that person.

Unless otherwise stipulated in the Contract Documents, advise the Engineer a minimum of 2 working days before any work requiring a lane closure begins and a minimum of 10 working days prior to the imposition of height, width and weight restrictions.

The Contractor may develop an alternate TMP. Such plan requires the approval from the KDOT District Office or the KDOT Bureau of Transportation Safety and Technology before installation. Such approval may take up to 10 business days.

At a minimum, address the following in the alternate TMP:

1. The TTCP component shall conform to the Traffic Engineering Standard Drawings and the applicable portions of SECTION 805-WORK ZONE TRAFFIC CONTROL AND SAFETY in the 2007 Standard Specifications for State Road and Bridge Construction, including related special provisions. Also, it may consist of any one or more of the following, but need not be limited to:

- a. Work hour restrictions
- b. Detours and lane closures
- c. Construction phasing
- d. Weekend work
- e. Full roadway closures

2. The TO component may consist of any one or more of the following, but need not be limited to:

- a. Signal timing
- b. Temporary traffic signals
- c. Turn restrictions
- d. Heavy vehicle restrictions

3. The PI component may consist of any one or more of the following, but need not be limited to:

- a. Newspaper ads
- b. News releases
- c. Public ad campaign
- d. Internet sites
- e. Changeable message signs (CMS)
- f. Dynamic speed message sign
- g. Traveler information systems (511)