

KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION LIST

PAGE: 1  
DATE: 12/10/15

STATE PROJECT NO: U083-041 KA 1008-05

STATE CONTRACT NO 516012676

PREPARED DATE:

WAGE AREA: 1

REVISED DATE:

PRIMARY DISTRICT: 6

PRIMARY COUNTY: HASKELL

DESCRIPTION: GRADING, BRIDGE & SURFACING. US-83 FROM 1.75 M S OF US-83/US-160/K-144 JCT, N TO 4.5 M N OF US-83/US-160/K-144 JCT IN HASKELL COUNTY. NET LENGTH IS 6.212 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

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08-10-66-R05	REQUIRED CONTRACT PROVISION-NONCOLLUSION / HISTORY-DEBARMENT
08-31-09-R01	REQUIRED CONTRACT PROVISION-EMULSIFIED ASPHALT ADJUSTMENT
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-R07	REQUIRED CONTRACT PROVISION-PRICE ADJUSTMENT FOR FUEL
06-01-06-R01	REQUIRED CONTRACT PROVISION-PRICE ADJUSTMENT FOR ASPHALT
07-19-80-R13	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
09-06-94-R01	NOTICE TO CONTRACTORS (USDOT HOTLINE)
01-01-11-R01	REQUIRED CONTRACT PROVISION-TAX CLEARANCE CERTIFICATE
KS160019	MINIMUM WAGE RATE (AREA 1)
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
15-ER-1-R03	ERRATA SHEET FOR STD SPEC BOOK FOR RD & BR CONST, 2015 ED
15-01002	INFORMATION TO CONTRACTORS (STATUS OF UTILITIES)
15-01008	FUEL ADJUSTMENT
15-01009	ASPHALT ADJUSTMENT
15-01010	EMULSIFIED ASPHALT ADJUSTMENT
15-01011-R01	MIGRATORY BIRDS, BORROW-WASTE SITES AND STAGING AREAS
15-01016	PROSECUTION AND PROGRESS
15-02001	REMOVAL OF EXISTING STRUCTURES
15-07003-R01	STRUCTURAL STEEL FABRICATION
15-07004	STRUCTURAL METALS FABRICATION
15-07005	QUALIFICATION OF FIELD WELDERS
15-09002	STORMWATER POLLUTION MANAGEMENT
15-11001-R01	STONE FOR RIPRAP, DITCH LINING AND OTHER MISCELLANEOUS USES
15-11002	AGGREGATE FOR HMA
15-11003	AGGREGATES FOR CONCRETE NOT PLACED ON GRADE
15-11004	AGGREGATE FOR ON GRADE
15-11005	AGGREGATES FOR SUBGRADE MODIFICATION OR RECONSTRUCTION
15-11006	AGGREGATES FOR SURFACING OR RESURFACING

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PROVISION NO. DESCRIPTION

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15-12001	GENERAL REQUIREMENT DIVISION 1200
15-16001	STRUCTURAL STEEL TUBING
15-21001	SEEDS
15-22001	THERMOPLASTIC
15-22003	MULTI - COMPONENT LIQUID PAVEMENT MARKING MATERIAL
15-22004	PAVEMENT MARKING PAINT
15-22005	IMAGE SYSTEMS
15-23001	WOOD POSTS
15-25001	PART V
15-25002	CONSTRUCTION MANUAL - PART V
15-PS0008	FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES
15-PS0360	TEMPORARY EROSION AND POLLUTION CONTROL
15-PS0434	CONSENT DECREE
15-WS0017	WORK SCHEDULE

END OF SPECIAL PROVISION LIST

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General Decision Number: KS150019 01/02/2015 KS19

Superseded General Decision Number: KS20140019

State: Kansas

Construction Type: Highway

Counties: Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Logan, Lyon, Marion, Marshall, McPherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, Washington, Wichita, Wilson and Woodson Counties in Kansas.

HIGHWAY CONSTRUCTION PROJECTS

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/02/2015

SUKS2013-001 08/02/2013

	Rates	Fringes
CARPENTER (ROUGH)		
Chase, Lyon.....	\$ 15.03	0.00
Finney, Kearny.....	\$ 12.89	6.35
Ottawa, Saline.....	\$ 13.16	7.34
Remaining Counties.....	\$ 12.90	6.39
CARPENTER		
Chase.....	\$ 17.96	0.00
Finney, Kearny.....	\$ 14.92	0.00
Lyon.....	\$ 17.13	0.00
Ottawa, Saline.....	\$ 17.70	0.00
Remaining Counties.....	\$ 14.94	0.00
CONCRETE FINISHER		
Chase, Lyon.....	\$ 15.90	0.00
Ottawa, Saline.....	\$ 15.31	0.00
Remaining Counties.....	\$ 14.38	0.00

## ELECTRICIAN

Chase, Lyon, Ottawa, Saline.	\$ 22.40	3.57
Finney, Kearny.....	\$ 22.56	3.96
Remaining Counties.....	\$ 23.31	4.22

## Form Liner and Setter

Chase, Lyon.....	\$ 13.75	1.85
Remaining Counties.....	\$ 13.45	1.20

## IRONWORKER, REINFORCING

Chase, Lyon.....	\$ 13.59	0.00
Ottawa, Saline.....	\$ 12.97	0.00
Remaining Counties.....	\$ 10.60	0.00

## LABORER (COMMON or GENERAL)

Allen.....	\$ 11.20	0.00
Anderson.....	\$ 17.58	0.00
Atchison.....	\$ 13.08	2.49
Barton.....	\$ 11.37	0.00
Bourbon.....	\$ 12.90	0.00
Brown.....	\$ 13.98	0.00
Chase.....	\$ 16.46	0.00
Cherokee.....	\$ 14.55	0.00
Clark, Morris.....	\$ 12.65	0.00
Cloud.....	\$ 12.65	2.56
Coffey.....	\$ 14.31	1.85
Crawford.....	\$ 12.25	0.00
Decatur.....	\$ 10.78	0.00
Dickinson.....	\$ 14.35	0.00
Ellis.....	\$ 16.96	0.00
Ellsworth.....	\$ 12.15	0.00
Finney, Kearny.....	\$ 12.38	0.00
Ford, Lyon.....	\$ 13.66	0.00
Graham.....	\$ 11.94	0.00
Gray.....	\$ 12.11	0.00
Jewell.....	\$ 11.24	0.00
Kingman.....	\$ 11.52	0.00
Lane.....	\$ 13.91	0.00
Lincoln.....	\$ 13.31	0.00
Marion.....	\$ 14.07	0.00
Marshall.....	\$ 11.53	0.00
McPherson.....	\$ 11.87	0.00
Meade.....	\$ 12.39	0.00
Montgomery, Pratt.....	\$ 11.88	0.00
Nemaha.....	\$ 17.02	0.00
Neosho.....	\$ 11.17	0.00
Osborne.....	\$ 11.84	0.00
Ottawa.....	\$ 10.91	3.34
Pawnee.....	\$ 11.00	0.00
Phillips.....	\$ 11.85	1.25
Remaining Counties.....	\$ 12.33	0.00
Reno.....	\$ 12.50	0.00
Republic, Thomas.....	\$ 12.03	0.00
Rice.....	\$ 11.14	0.00
Russell.....	\$ 11.47	0.00
Saline.....	\$ 10.87	3.36
Sherman.....	\$ 12.81	0.00
Smith.....	\$ 12.78	0.00
Trego.....	\$ 11.30	0.00
Washington.....	\$ 11.56	0.00
Wilson.....	\$ 10.14	0.00

## LABORER (FLAGGER)

Ellsworth.....	\$ 10.25	0.00
Finney, Kearny.....	\$ 9.86	0.00
Ford.....	\$ 11.70	0.00

Graham.....	\$ 10.29	0.00
Gray.....	\$ 11.14	0.00
Mcperson.....	\$ 10.24	0.00
Remaining Counties.....	\$ 10.61	0.00
Sherman.....	\$ 10.73	0.00
Thomas.....	\$ 11.83	0.00

POWER EQUIPMENT OPERATOR:  
(ASPHALT PAVER SCREED)

Chase, Lyon, Ottawa, Saline.	\$ 13.97	0.00
Finney, Kearny.....	\$ 13.95	0.00
Remaining Counties.....	\$ 13.94	0.00

POWER EQUIPMENT OPERATOR:  
(ASPHALT PAVING MACHINE)

Chase, Lyon, Ottawa, Saline.	\$ 14.94	0.00
Cowley.....	\$ 14.96	0.00
Ellsworth.....	\$ 16.07	0.00
Finney, Kearny.....	\$ 14.92	0.00
Lane.....	\$ 15.11	0.00
Remaining Counties.....	\$ 14.90	0.00
Sherman.....	\$ 14.31	0.00

POWER EQUIPMENT OPERATOR:  
(BACKHOE)

Chase, Lyon.....	\$ 17.29	3.08
Finney, Kearny.....	\$ 14.58	0.00
Ottawa, Saline.....	\$ 17.16	2.77
Remaining Counties.....	\$ 14.67	0.00

POWER EQUIPMENT OPERATOR:  
(BULLDOZER)

Chase, Lyon, Ottawa, Saline.	\$ 15.57	2.58
Finney, Kearny.....	\$ 15.19	2.40
Remaining Counties.....	\$ 15.06	2.37

POWER EQUIPMENT OPERATOR:  
(CONCRETE FINISHING MACHINE).....

	\$ 15.97	0.00
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POWER EQUIPMENT OPERATOR:  
(CONCRETE SAW)

Chase, Lyon, Ottawa, Saline.	\$ 14.88	0.00
Finney, Kearny.....	\$ 14.85	0.00
Remaining Counties.....	\$ 14.78	0.00

POWER EQUIPMENT OPERATOR:  
(CRANE)

Chase, Lyon, Ottawa, Saline.	\$ 19.38	11.37
Remaining Counties.....	\$ 18.38	7.66

POWER EQUIPMENT OPERATOR:  
(DISTRIBUTOR-BITUMINOUS)

Chase, Finney, Kearny,		
Lyon, Ottawa, Saline.....	\$ 13.45	0.00
Remaining Counties.....	\$ 13.47	0.00

POWER EQUIPMENT OPERATOR:  
(EXCAVATOR)

Chase, Lyon, Ottawa, Saline.	\$ 17.21	2.32
Finney, Kearny.....	\$ 17.05	2.25
Remaining Counties.....	\$ 17.00	2.19

POWER EQUIPMENT OPERATOR:  
(FRONT END LOADER)

Cowley.....	\$ 12.72	0.00
Ellsworth.....	\$ 14.07	0.00

Gray.....	\$ 13.85	0.00
Remaining Counties.....	\$ 12.50	0.00
Trego.....	\$ 12.92	0.00
POWER EQUIPMENT OPERATOR:		
(MECHANIC)		
Ellsworth.....	\$ 19.79	0.00
Remaining Counties.....	\$ 18.65	0.00
POWER EQUIPMENT OPERATOR:		
(MOTOR GRADER-FINISH)		
Chase, Lyon, Ottawa, Saline..	\$ 17.23	2.18
Gray.....	\$ 18.67	1.56
Remaining Counties.....	\$ 16.82	1.95
POWER EQUIPMENT OPERATOR:		
(MOTOR GRADER-ROUGH)		
Chase, Finney, Kearny,		
Lyon, Ottawa, Saline.....	\$ 15.77	1.84
Remaining Counties.....	\$ 15.58	1.67
POWER EQUIPMENT OPERATOR:		
(MOTOR SCRAPER)		
Chase, Lyon, Ottawa, Saline..	\$ 14.11	1.04
Finney, Kearny.....	\$ 13.85	0.00
Remaining Counties.....	\$ 13.87	0.00
POWER EQUIPMENT OPERATOR:		
(PAVING MARKING).....		
	\$ 19.93	4.49
POWER EQUIPMENT OPERATOR:		
(ROLLER COMPACTOR)		
Chase,Lyon.....	\$ 15.48	0.00
Cowley.....	\$ 13.01	0.00
Ellsworth.....	\$ 13.37	0.00
Finney, Kearny, Mcpherson...	\$ 12.27	0.00
Ford.....	\$ 11.92	0.00
Gray.....	\$ 13.71	0.00
Kingman.....	\$ 13.04	0.00
Ottawa, Saline.....	\$ 14.92	0.00
Remaining Counties.....	\$ 11.75	0.00
Thomas.....	\$ 12.20	0.00
Trego.....	\$ 11.66	0.00
POWER EQUIPMENT OPERATOR:		
(ROTARY BROOM)		
Finney, Kearny.....	\$ 10.71	0.00
Marshall.....	\$ 11.98	0.00
Mcpherson.....	\$ 12.34	0.00
Remaining Counties.....	\$ 10.25	0.00
Sherman.....	\$ 12.62	0.00
POWER EQUIPMENT OPERATOR:		
(ROTOMILL)		
Chase, Finney, Kearny,		
Lyon, Ottawa, Saline.....	\$ 16.15	0.00
Remaining Counties.....	\$ 16.09	0.00
POWER EQUIPMENT OPERATOR:		
(SKIDSTEER LOADER)		
Chase, Lyon, Ottawa, Saline..	\$ 16.62	3.62
Finney, Kearny.....	\$ 14.68	0.00
Remaining Counties.....	\$ 14.60	0.00
Sherman.....	\$ 13.12	1.34
POWER EQUIPMENT OPERATOR:		

(SPREADER BOX SELF-PROPELLED)

Chase, Lyon, Ottawa, Saline.	\$ 12.91	0.00
Finney, Kearny.....	\$ 12.99	0.00
Remaining Counties.....	\$ 13.07	0.00

POWER EQUIPMENT OPERATOR:

(TRACTOR)

Chase, Lyon, Ottawa, Saline.	\$ 13.49	0.00
Cowley.....	\$ 11.57	0.00
Finney, Kearny.....	\$ 13.45	0.00
Kingman.....	\$ 13.25	0.00
Meade.....	\$ 12.94	0.00
Remaining Counties.....	\$ 13.50	0.00

Serviceman (equipment).....\$ 16.33 1.74

TRUCK DRIVER (HEAVY DUTY,  
OFF-ROAD)

Chase, Lyon, Ottawa, Saline.	\$ 15.10	0.00
Finney, Kearny.....	\$ 15.26	0.00
Remaining Counties.....	\$ 15.78	0.00

TRUCK DRIVER (SINGLE AXLE)

Chase, Lyon, Ottawa, Saline.	\$ 15.15	0.00
Coffey.....	\$ 17.50	2.80
Finney, Kearny.....	\$ 15.13	0.00
Remaining Counties.....	\$ 15.10	0.00

TRUCK DRIVER (TANDEM)

Chase.....	\$ 13.53	0.00
Finney, Kearny.....	\$ 14.39	0.00
Ford.....	\$ 13.96	0.00
Gray.....	\$ 13.50	0.00
Kingman.....	\$ 14.56	1.45
Lyon.....	\$ 13.73	0.00
Ottawa, Saline.....	\$ 13.57	0.00
Remaining Counties.....	\$ 12.97	0.00
Reno.....	\$ 13.75	0.00
Sherman.....	\$ 13.35	0.00
Washington.....	\$ 13.55	0.00

TRUCK DRIVER (TRIPLE AXLE and  
SEMI)

Chase, Lyon.....	\$ 17.56	0.00
Finney, Kearny.....	\$ 14.49	0.00
Gray.....	\$ 16.09	1.12
Ottawa, Saline.....	\$ 17.09	0.00
Remaining Counties.....	\$ 14.48	0.00
Reno.....	\$ 16.09	8.51
Sherman.....	\$ 15.87	2.49

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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 a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.



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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

September 22, 2015

Project 83-41 KA-1008-05

Haskell County

Company	Notified to move	Work started	Percent Complete	Completion Date (est.)	Permit or Agreement #
AT&T			50%	11/1/15	Permit #06-15-021
Black Hills Energy			50%	10/19/15	Agreement #006152029
BP America (Linn Operating, Inc)			100%		Agreement #00605205
Cimarex Energy Co.			0%	11/1/15	Permit pending
Kansas Gas Service/Oneok		No relocation necessary			
Kansas Natural Gas		No relocation necessary			
Pioneer Electric			30%	11/1/15	Agreement #006142034
Southern Star Central Gas Pipeline		No relocation necessary			
Sunflower Electric Coop			100%		Agreement #006142027

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 2015**

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

**FEDERAL AID CONTRACTS  
UTILIZATION OF DISADVANTAGED BUSINESSES**

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

**E.** 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.

06-01-15 C&M  
Jul-15 Letting

**KANSAS DEPARTMENT OF TRANSPORTATION  
SPECIAL PROVISION TO THE  
STANDARD SPECIFICATIONS, 2015 EDITION**

Delete SECTION 901 and replace with the following:

**SECTION 901**

**STORMWATER POLLUTION MANAGEMENT**

**901.1 DESCRIPTION**

Design, implement, inspect and maintain appropriate best management practices to minimize or eliminate erosion, sediment and other pollutants in stormwater runoff from the project.

**BID ITEMS**

SWPPP Design  
SWPPP Inspection  
Water Pollution Control Manager  
Stormwater Compliance Disincentive Assessment

**UNITS**

Lump Sum  
Each  
Each  
Lump Sum

**901.2 MATERIALS**

None Required.

**901.3 CONSTRUCTION REQUIREMENTS**

**a. Permits.**

(1) Projects with 1.0 acre or more of erodible surface: KDOT will submit the Notice of Intent (NOI) for authorization to discharge stormwater runoff from construction activities in accordance with the Kansas Water Pollution Control General Permit. 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 required in the Bidding Proposal Form, 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 **SECTION 103**. 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 authorization does not cover Contractor plant sites and Contractor-Furnished borrow and waste sites outside the project limits.

(2) Projects with less than 1.0 acre of erodible surface: Kansas General Permit coverage is not required. The Contractor is required to comply with **subsection 901.3b.** and use appropriate Best Management Practices (BMPs) to minimize stormwater pollution.

A Storm Water Pollution Prevention Plan (SWPPP) (**subsection 901.3c.**) is not required.

Inspection and Maintenance Reports (**subsection 901.3e.**) are not required.

A Water Pollution Control Manager (**subsection 901.3d.**) is not required.

Stormwater Erosion Control Conferences (**subsection 901.3f.**) are not required.

**b. General.** When Contractor-furnished borrow or plant sites are outside the project limits, obtain all required permits and clearances required for compliance, **SECTION 107**. Provide copies of all such permits and clearances to the Engineer.

Take all measures necessary to minimize or eliminate erosion, sediment and other pollutants in stormwater runoff from 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 Best Management Practices (BMPs) from the Area Engineer. Maintenance or removal of BMPs not installed by the Contractor may be considered Extra Work, **SECTION 104**, unless addressed by other items of the contract (e.g. sediment removal).

Install devices to establish a perimeter control of the project in areas where it is anticipated that stormwater runoff will leave the project. Install perimeter control devices prior to or simultaneously with the clearing and grubbing operations. Do not perform grading until perimeter control devices are in place and approved by the Engineer.

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 902**; 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 902**.

**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 finish 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 of the exposed areas according to **SECTION 902** 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 stormwater runoff from entering the excavated area.

Do not ford live streams with construction equipment.

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. Only use clean aggregate fill for temporary crossing, work platforms, etc. 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.

Install and maintain temporary erosion and pollution control devices as shown in the Contract Documents, **SECTION 902**, the SWPPP and as directed by the Engineer.

Implement temporary erosion and pollution control with best management practices (BMPs) as described in the SWPPP.

At a minimum, perform the following:

- Use temporary best management practices to minimize or eliminate pollutant discharge resulting from the construction of the project;
- Use temporary best management practices to prevent contamination of adjacent streams or other watercourses, lakes, ponds or other areas of water impoundment;
- Coordinate temporary best management practices 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 practicable; 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.

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 this specification, the approved SWPPP, 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, **SECTION 105**, until all necessary maintenance, corrective actions, removal of unnecessary devices and temporary stabilization is completed for the project. Failure to complete this work within the contract time may result in liquidated damages, **SECTION 108**.

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.

**c. Project Storm Water Pollution Prevention Plan (SWPPP).** Before the preconstruction conference, submit to the Field Engineer a minimum of 3 original copies of the SWPPP. No contract work may begin until the Field 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. Review all applicable permits (Corps of Engineers, Department of Agriculture, etc.) for special conditions affecting stormwater pollution control;
- 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. Design, install and maintain BMPs 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;
- Design, install, implement and maintain additional BMPs to minimize or eliminate contamination of stormwater runoff 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.

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.

**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;
- Have completed KDOT's Environmental Inspector Training (EIT) and Environmental Manager Training (EMT) programs within the 12 months prior to beginning construction activities. Maintain these certifications 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 approved by the Engineer, perform SWPPP Inspections according to **subsection 901.3e**.

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 12 months prior to assuming WPCM duties. The notification shall include training certificates and contact information for the replacement WPCM.

**e. SWPPP Inspections.** The Contractor's Environmental Inspector shall have completed KDOT's Environmental Inspector Training (EIT) and maintain a current certification while performing SWPPP Inspections.

KDOT's 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. Continue inspections 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). KDOT and Contractor Inspectors shall each sign the report.

Correct any deficiencies noted during a SWPPP Inspection within 7 days of the inspection despite weather conditions that make it difficult (but not impossible) to perform corrections. No additional time shall be granted 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.

Submit completed copies of KDOT Form 247 to the Area/Metro Engineer and the 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.

The Contractor Inspector's signature acknowledges awareness of all reported deficiencies and corrective actions required to be taken within 7 calendar days of the inspection.

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.

**f. 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.

**g. Stormwater Compliance Disincentive Assessment.**

If the Contractor fails to follow any requirement 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," 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 of the KGP 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 **SECTION 105**, and cause the Engineer to remedy this unacceptable work according to **SECTION 105**.

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 901.3e.** 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.

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 901.3f,** 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 901.3e.** 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 901.3e.,** 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 901.3b.,** 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

Should an event causing 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 impossible 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 Engineer will deduct and withhold from contract funds the Stormwater Compliance Disincentive Assessment under **subsection 901.3g.** The assessments are to be computed in the same manner as damages under **SECTION 108** (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 **SECTION 108.**

The disincentive assessments under **subsection 901.3g,** 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 901.3h.**

**h. 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 "Extra Work", **SECTION 104.**

Understand 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 901.3g.** or for penalties/fines under **subsection 901.3h.**

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

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

The Engineer will measure each Water Pollution Control Manager (WPCM). Each is defined as each calendar week (Sunday-Saturday) that the Contractor provides a WPCM according to **subsection 901.3.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 disincentives under the bid item "Stormwater Compliance Disincentive Assessment" by the Lump Sum.

05-13-15 C&M  
Jul-15 Letting



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 2015**

**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

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/s/ Karl Brooks  
KARL BROOKS  
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/s/ David Cozad  
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/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:

**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, 2015 EDITION**

**WORK SCHEDULE; SPECIFIED CALENDAR COMPLETION DATES; LIQUIDATED DAMAGES; CLEANUP TIME**

**I. PROJECT DEFINED; NATURE OF PROJECT**

The primary operation on Project No. 83-41 KA 1008-05 is the pavement reconstruction of US-83 from approximately 2 miles south of US-160/K-144 junction north for 6 miles in Haskell County.

**II. NOTICE TO PROCEED**

The Engineer will issue the notice to proceed at the Contractor's request after the Contractor executes the Contract and has participated in the pre-construction conference held by KDOT for the project.

**III. CALENDAR COMPLETION DATE OF NOVEMBER 20, 2017 FOR COMPLETION OF ALL WORK NECESSARY TO OPEN THE PROJECT TO UNRESTRICTED TRAFFIC; LIQUIDATED DAMAGES**

A. On or before **NOVEMBER 20, 2017**, 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, 2017**, 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, 2017**.

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 22, 2017 FOR COMPLETION OF ALL WORK INCLUDING CLEANUP; LIQUIDATED DAMAGES**

A. **Subsection 108.4c** of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2015 Ed.) (Standard Specifications) does not apply to this Contract. Instead, the Contractor shall complete the remaining, unfinished contract pay items, subsidiary items, incidental work, final cleanup, and final punch list on or before **DECEMBER 22, 2017**.

B. Liquidated Damages when project is open to unrestricted traffic. If the all remaining, unfinished contract pay items, subsidiary items, incidental work, final cleanup, and final punch list is not completed on or before **DECEMBER 22, 2017**, 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, 2017**, the Contractor obstructs the unrestricted traffic flow in order to perform any work, 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, 2017**.

10-07-15 C&M (AR)