

**CONSTRUCTION ADMINISTRATION
FORCE ACCOUNT AGREEMENT**

23 TE-0303-01

TEA-T030(301)

Transportation Enhancement Project

Brick Street Restoration

Lawrence, KS

THIS AGREEMENT entered into this _____ day of _____, 2007 by and between the City of Lawrence, hereinafter referred to as the "City", as principal, and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary", as agent pursuant to authority vested in the parties hereto by virtue of K.S.A. 68-402b and K.S.A. 68-401 et seq. for the restoration of the Old West Lawrence Historic District, two-block section of brick street which will include the removal of the asphalt overlay, removal and cleaning of the bricks, installation of a six inch concrete base and relaying the brick surface on Ohio Street from 6th Street (US Highway 40), south to 8th Street in Lawrence, hereinafter referred to as "Project."

WITNESSETH:

WHEREAS, the Secretary of Transportation of the State of Kansas pursuant to federal and state law authorizes the City to perform certain construction administration work on the above noted "Project" and,

WHEREAS, in the execution of this Agreement, the City certifies it has now available sufficient equipment of suitable type and the necessary employees adequately trained to perform the work required under this Agreement in an economical and workmanlike manner, including, but not necessarily limited to the following:

Construction Administration - Provide bidding services that shall include printing and distribution of plans and specifications for bidding, advertising and obtaining bids, reviewing, awarding and preparing contracts for construction and providing interpretations or clarifications of the construction documents. Provide other services necessary to insure proper construction of the project including contract administration, necessary surveys, materials testing and review and recommendation for approval of all shop drawings, change orders and voucher payments, as may be required.

WHEREAS, the City further certifies the use of the forces and equipment required for the performance of this work will not interfere with other work which is necessary to be performed by such forces and equipment on other projects by the City, and

WHEREAS, the City and the Secretary desire to set forth in this instrument their understanding and agreements relating to the construction administration costs of the Project.

NOW, THEREFORE, in consideration of the covenants of the parties and to give this Agreement full force and effect in providing the benefits herein before mentioned, the parties hereto mutually agree as follows:

SCOPE OF SERVICES

A. GENERAL RESPONSIBILITIES AND DUTIES

- (1) The City shall perform professional services necessary and incidental to the accomplishment of the Project to the satisfaction of KDOT, and as more detailed in the Attachment No. 1 - Construction Administration Provisions.
- (2) The City shall furnish services, labor, materials, equipment, supplies and incidentals, necessary to conduct and complete the work.
- (3) The City shall attend all conferences as required to meet the terms of the Agreement.
- (4) The City shall comply with OMB Circular No. A-133.
- (5) The City's principal contact with the KDOT shall be with the Bureau of Program and Project Management.
- (6) The City shall become familiar with the standard practices of the KDOT prior to beginning any construction work under this agreement.
- (7) The City agrees the work under this Agreement shall comply with all applicable federal and state laws and regulations.
- (8) The City agrees the work under this Agreement shall at all times be subject to the review and approval of the KDOT's authorized representative.
- (9) The City agrees the KDOT shall have the right to access and review all files and documents for this project.
- (10) The City agrees to receive approval from KDOT on any overrun and/or underruns incurred on the project prior to initiation.
- (11) The City agrees compliance with all of the foregoing shall be considered to be within the purview of this Agreement and shall not constitute a basis for additional or extra compensation.

B. CONTROL AND AUTHORITY

- (1) The City will oversee all Project construction and related activities to assure compliance with applicable Federal and State requirements of all work performed under this Agreement.
- (2) The City will serve as the supervising agency of all personnel and services performed under this Agreement.

- (3) The City shall maintain copies of all reports and paperwork, and other Project document related activities for review by KDOT.
- (4) The City shall communicate and coordinate Project-related activities with the KDOT.

PROSECUTION AND PROGRESS

A. GENERAL

- (1) Construction Administration - Provide bidding services that shall include obtaining bids, reviewing, awarding and preparing contracts for construction and providing interpretations or clarifications of the construction documents. Provide other services necessary to insure proper construction of the project including contract administration, necessary surveys, materials testing and review and recommendation for approval of all shop drawings, change orders and voucher payments, as may be required.
- (2) The KDOT will not be responsible for any work performed by the City or liable for payments thereof prior to the execution of this agreement.
- (3) Should the KDOT deem it necessary for the City to render additional services for review of construction items, conditions, claims of litigation matters after completion of the Agreement, the City agrees to cooperate and render such requested services. Such services shall be paid for in the amount and manner mutually agreed upon by the KDOT and the City.
- (4) The Agreement shall be considered completed upon final payment for Construction Administration and a Final Acceptance Form signed by KDOT unless previously terminated as provided in Termination of Agreements.

B. TERMINATION OF AGREEMENT

- (1) The right is reserved by the KDOT to terminate all or part of this Agreement at any time upon written notice to the City. Such notice shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) The City may terminate this Agreement, in the event of substantial failure of other parties to perform in accordance with the terms hereof, upon ten (10) days written notice in advance of the effective date of such termination received all parties to this Agreement.
- (3) In the event the Agreement is terminated by the KDOT without fault on the part of the City, the City shall be paid for the work performed or services rendered under the basis of Payment determined for the Agreement.

- (4) In the event the services of the City are terminated by the KDOT for fault including but not limited to unreasonable delays in performance, failure to respond to KDOT requests, and/or unsatisfactory performance on the part of the City, the City shall be paid the reasonable value of the work performed or services rendered and delivered to the KDOT up to the time of termination. The value of the work performed and services rendered and delivered will be determined by the KDOT.

C. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The City shall not sublet or assign, outside of the City's departments, all or any part of the work under this Agreement.
- (2) All the applicable terms of this Agreement remain in force and are a condition to any work approved to be sublet or assigned. Specific reference is made to Special Attachment #3, as applicable to the subcontract.

BASIS OF PAYMENT

A. GENERAL

- (1) Compensation for the completed and approved construction administration services rendered under this Agreement shall be the incurred and reimbursable cost to the City. Cost shall not exceed the Agreement estimates as set forth in the Construction Administration Provisions (Attachment No. 1) based on the Supporting Data Sheet for Estimate of Administration Fees (Attachment No 2). Compensation shall be as allowed by state law and the Federal share of eighty (80) percent which is limited to the applicable Federal-aid cost sharing formulae and the availability of Federal-aid funds.
- (2) The City may submit invoices to the KDOT, not more often than once per month during the progress of the work, for partial payment for the approved construction administration work completed to date by the City. The Secretary's Bureau of Fiscal Services will issue a warrant to the City of the approved or eligible actual costs vouchered the Secretary (the maximum of the Federal-aid share of the Agreement Estimates for construction administration). Progress billing shall be supported by a progress schedule acceptable to the KDOT, which should include a statement of the percentage of work completed and the actual costs incurred during the billing period. Accumulated partial payments shall not exceed the total fees earned less the \$500 retainage, prior to approval and acceptance of completed work on all phases by the KDOT.
- (3) The voucher for final payment due under provisions of this Agreement may be submitted after the Final Acceptance of the Project.
- (4) Extra work, if any, shall be compensated as set forth in an approved supplement to this Agreement covering such work. Extra work will be paid for separately and in addition to the Agreement Estimates. Such payment shall be full compensation for work performed or services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.

B. FINAL PAYMENT TO GOVERNMENTAL ENTITIES

- (1) The final claim for construction administration due under the provisions of this Agreement may be submitted after the City's acceptance and approval of the construction work.
- (2) When the final claim for construction costs has been audited and upon review of the records, reports, final estimates, survey notes, record drawings, and other documents required to be maintained under this Agreement, the Secretary will issue the City a warrant for that portion of the eligible retainage (up to the maximum of the federal share of the Agreement Estimate and as allowed by provisions of State Law).
- (3) It is KDOT's policy to make final payments to a governmental entity for services related to the Highway Program in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audits of State and Local Governments" and in 49 C.F.R. 18 (Common Rule), require an audit be performed by an independent, certified public accountant in accordance with those standards.

KDOT may pay the final amount due for the authorized work performed based upon the Governmental Entity's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. The governmental entity, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits that cover the period of the expenses being claimed for reimbursement. The KDOT and the governmental entity agree that as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the KDOT will review the Single Audit Report for items which are declared as *ineligible* for reimbursement. The governmental entity agrees that if payment has been made to the governmental entity for items subsequently found to be *ineligible* for reimbursement by audit, the governmental entity will refund to the KDOT the total amount of monies paid for same.

- (4) Reimbursement for costs will be limited to those which are allowable under the Code of Federal Regulations (CFR) Title 23 and Title 48, Chapter 1, except to the extent the provisions of that sub-part are clearly inappropriate to the Agreement.

C. EXTRA WORK, OR DECREASED WORK

- (1) The City must proceed with the work by furnishing the necessary labor, equipment, materials and professional services to complete the work within the time limits specified or as adjusted by agreement of the parties.
- (2) If in the City's opinion such work is not included in the terms or scope of this Agreement, the City must notify the KDOT in writing of this opinion if extra compensation is desired.

- (3) Such notification shall include the justification for the claim for extra compensation and the estimated amount of additional fee requested.
- (4) The KDOT will review the City's submittal and, if acceptable, approve a supplement to this Agreement. Work may only proceed upon authorization by the KDOT, which will be followed up with the execution of the supplemental agreement.

MISCELLANEOUS PROVISIONS

A. CONSTRUCTION ADMINISTRATION STANDARDS

- (1) All work under this Agreement shall be performed in accordance with the current standard practices of the City and/or instructions from the KDOT.
- (2) No variations will be permitted except by approval from the KDOT.

B. OWNERSHIP OF DOCUMENTS

- (1) Upon completion or termination of this Agreement all plans, contract documents, guides, notes, diaries, reports, records and other information and data collected or prepared by the City in the performance of this Agreement shall be properly arranged and shall become the property of the City.
- (2) Documents collected or prepared by the City in the performance of this contract may be used without restriction by the KDOT for any public purpose. Any such use shall be without compensation to the City.
- (3) It is also understood and agreed the Project plans, documents (as available), and the Agreement Estimate and other Attachments are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

C. ACCESS TO RECORDS

- (1) The City agrees to maintain a complete set of books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this Agreement for five (5) years after the final federal payment from KDOT under the Agreement. The City further agrees to provide access or copies of all the above-mentioned records to the Secretary upon request.
- (2) If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the requesting agency.
- (3) The City will maintain these materials in accordance with K.S.A. 45-401 et. Seq. and K.S.A.75-3501 et. Seq.

D. ERRORS AND OMISSIONS

- (1) The City shall be responsible for the accuracy of the work performed by the City under the Agreement, and shall promptly make necessary revisions or corrections resulting from their negligent acts, errors or omissions without additional compensation.
- (2) The City shall give immediate attention to these revisions or corrections to prevent or minimize any delay.
- (3) The City shall be responsible for any damages incurred as a result of their errors, omissions, or negligent acts and for any losses or costs to repair or remedy construction.

E. CONFLICT OF INTEREST

- (1) The City warrants they have no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the Agreement.
- (2) The City will not, without written permission from KDOT, engage the services of any person(s) in the employment of the KDOT for any work required by the term of this Agreement.

F. HOLD HARMLESS CLAUSE

- (1) The City hereby expressly agrees and covenants they will defend, hold, and save harmless and indemnify the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments and damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, its agents, employees or subcontractors. The City shall not be required to defend, indemnify and hold the Secretary harmless for negligent acts of the Secretary or his or her authorized representatives or employees.

G. THIRD PARTY BENEFICIARY

- (1) It is expressly agreed no third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

H. MANDATORY CONTRACT CLAUSES IN CITY CONTRACTS

- (1) City shall include in all contracts entered into by the City for the project the Contractual Provisions Attachments (DA-146a) and the Anti-Discrimination Attachment which are by reference incorporated in this agreement.

IN WITNESS WHEREOF: The parties hereto have caused this Agreement to be signed by their duly authorized officers. It is further understood this Agreement and all other agreements entered into under the provisions of this Agreement shall be binding upon the parties to this Agreement and their successors in office.

ATTEST:

CITY OF LAWRENCE, KANSAS

City Clerk

(SEAL)

Mayor

Debra L. Miller
Secretary of Transportation

BY: _____

Jerome T. Younger, P.E.
Assistant Secretary and
State Transportation Engineer

INDEX OF ATTACHMENTS

- Attachment No. 1 - Construction Administration Provisions
- Attachment No. 2 - Supporting Data Sheet for Estimate of Administration Fees
- Attachment No. 3 - Civil Rights Act of 1964 & Rehabilitation Act of 1973
- Attachment No. 4 - Contractual Provision Attachment

CONSTRUCTION ADMINISTRATION PROVISIONS

SCOPE OF CONSTRUCTION ADMINISTRATION SERVICES

Services To Be Provided By The City

The City agrees to:

- (a) Attend all conferences designated as required to meet the terms of the Agreement.
- (b) Perform the activities required under the Agreement in a timely manner to avoid delay to the Contractor.
- (c) Become familiar with the plans, the Construction Contract Documents, and the Contractor's proposed schedule of operations prior to beginning fieldwork.
- (d) Perform the field operations in accordance with accepted safety practices.
- (e) Furnish all equipment required to accomplish the work.
- (f) Provide for personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under the Agreement.
- (g) Prepare and submit overrun and underrun requests KDOT for approval prior to initiation.
- (h) Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required or as are applicable to the Project.

Services To Be Provided By The Secretary

The Secretary agrees to:

- (a) Designate an authorized representative with the duties and responsibilities set forth in the General Responsibilities and Duties of the Agreement.
- (b) Provide such assistance and guidance to City as may be reasonably necessary to perform and complete the Agreement in conformance with Federal and State laws.
- (c) Reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

Basis Of Payment

- (a) Compensation for work provided by the City under the terms of the Agreement shall be as stated in "Basis of Payment" of the Agreement.
- (b) The estimated hourly equipment, labor costs, and Project estimates are included as attachments.
- (c) Labor and fringe benefits will be charged at the City's actual cost. If an employee is paid monthly, the hourly rate will be computed by dividing the salary by the work hours per month.
- (d) After completion of each the construction administration work, the City will furnish the KDOT with an itemized statement of the actual costs for the administration force account work detailed as follows:

Labor: The total hours, rates and extension for each job classification.

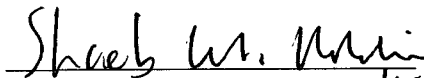
Materials: The quantities of materials, prices and extensions.

Transportation: Cost of vehicle miles.

Miscellaneous: Cost of property damage, liability and worker's compensation insurance premiums; unemployment insurance contributions, social security, health and retirement payments, and/or other eligible Project-related costs.

- (e) The Agreement Estimate total is **\$55,530**. It is intended as nearly as can be estimated to cover only actual costs and was agreed upon in order the Secretary might permit the City to do such work as set forth in the Agreement, provided, however that if extra work has been authorized it will be reimbursed as per terms of the supplemental agreement(s).

Respectfully submitted,


City Engineer 12/10/07

SUPPORTING DATA SHEET FOR ESTIMATE OF ENGINEERING FEES
Construction Administration

23 TE-0303-01
 TEA T030(301)
 Brick Street Restoration
 Lawrence, KS

(I) DIRECT PAYROLL				
POSITION TITLE	RATE	EST HOURS	AMOUNT	TOTAL
				(SUBTOTAL)
Project Engineer	\$50.00	90	\$4,500.00	
Project Inspector 1	\$25.00	780	\$19,500.00	
Project Inspector 2	\$37.50	195	\$7,312.50	
Project Inspector 3	\$25.00	160	\$4,000.00	
Project Inspector 4	\$25.00	80	\$2,000.00	
			SUBTOTAL(I)	\$37,312.50
(II) SALARY RELATED GENERAL OVERHEAD (42.0 %) X SUBTOTAL (I)				\$15,671.25
(III) SUBTOTAL (Sum of I and II)				\$52,983.75
(IV) DIRECT EXPENSES (TRAVEL, MATERIALS, POSTAGE AND CONSULTANTS)	RATE	DAYS/MILES/ OTHER	AMOUNT	
Earthwork Testing			\$400.00	
Concrete Testing			\$1,456.00	
Report Preparation			\$690.00	
			SUBTOTAL(V)	\$2,546.00
(V) COST (TOTAL FOR JOB ITEMS III+IV)				\$55,529.75

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

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

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

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 3555) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following nine "Nondiscrimination Clauses".

CLARIFICATION

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

Nondiscrimination Clauses

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

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the U. S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

- (2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
- (4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.

(7) Disadvantaged Business Obligation

- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
- (b) All necessary and reasonable steps shall be taken accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
- (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

(8) Executive Order 12898

- (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation and use such information in complying with this Order.

(9) Incorporation of Provisions: The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."