

**Cost-share Agreement
for
Kansas River Corridor Cyanobacteria-related Toxins and Taste and Odor Studies
by the
United State Geological Survey**
KWO contract #17-102B

This Agreement, between the Kansas Water Office, 900 SW Jackson, Suite 404, Topeka, Kansas, 66612, and City of Lawrence, Kansas (hereinafter "City,") c/o Tom Markus, City Manager, City Hall, 6 East 6th Street, PO Box 708, Lawrence, Kansas 66044 (hereinafter, collectively, "the parties") memorializes the parties' agreement to cost share for the purposes of providing local cost share support for the United States Geological Survey study on the Kansas River corridor for cyanobacteria-related toxins and taste and odor compound issues, as a follow-up to the issues that arose on that river during the summer 2011.

I. PROJECT TITLE

The project has been entitled *Cost-share Agreement for Kansas River Corridor Cyanobacteria-related Toxins and Taste and Odor Studies* by USGS. All references to this agreement shall include this title and the Kansas Water Office Contract Number: 17-102B.

II. COMPENSATION

A. The City of Lawrence agrees to pay the Kansas Water Office (KWO) not more than Thirty Thousand Two Hundred Fifty Seven dollars (\$30,257) for the work to be completed or performed in state fiscal year 2017 (July 1, 2016 through June 30, 2017) under a separate agreement between the KWO and the United States Geological Survey. This is the fifth year of a five year study.

B. Total payment to KWO will be due within 30 days upon receipt of invoice.

III. PAYMENTS

Payments under the terms of this Agreement should be sent to:

**Kansas Water Office
Attention: Accounts Receivable
Contract # 17-102B
900 SW Jackson, Suite 404
Topeka, Kansas 66612**

IV. EFFECTIVE DATES

This Agreement shall be effective for the period July 1, 2016 through and including June 30, 2017.

V. MODIFICATION AND EXTENSION/RENEWAL OF CONTRACT

This Agreement may be modified, extended, or renewed by written agreement of all parties to this Agreement. The parties agree that any request by the City of Lawrence for an extension of time of the completion of the Agreement should be communicated to the Kansas Water Office no later than 60 days prior to the stated completion date.

VI. CONTACT PERSONS

Each party has designated a contact person to facilitate communication between the parties for purposes of this Agreement. The designated contact person may be changed by either party at any time by sending notice of such change, via first class mail, to the appropriate party at the address first given above.

A. The Kansas Water Office contact person for purposes of this Agreement will be:

Name: Earl Lewis
Address: 900 SW Jackson, Suite 404, Topeka, KS 66612
Phone: 785-296-3185
E-mail: Earl.Lewis@kwo.ks.gov

B. The City of Lawrence contact person for purposes of this Agreement will be:

Name: Mike Lawless, P.E., Deputy Director of Utilities
Address: PO Box 708, Lawrence, KS 66044
Phone: 785-832-7862
E-mail: mlawless@lawrenceks.org

VII. OWNERSHIP OF MATERIALS, DOCUMENTS, ETC.

All reports, information, data, photos, documents, procedures, descriptions and work flows accumulated, developed or acquired by KWO under this Agreement, if any, shall be owned by the Kansas Water Office and all cost share participants. Any party may use, or release any such materials without the approval of any other party, however; notice should be provided to the other party.

VII. ADDITIONAL PROVISIONS

A. KANSAS CONTRACT PROVISIONS ATTACHMENT. The provisions found in contractual provisions attachment (Form DA-146a – Attachment A), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

B. TAX CLEARANCES. Tax Clearances: Per K.S.A. 75-3740-3(c), the Director of Purchases may reject the bid of any bidder who is in arrears on taxes due the State of Kansas. The Division of Purchases will confirm tax status prior to the release of a purchase order or contract award. The State of Kansas reserves the right to allow a bidder an opportunity to clear its tax status within ten (10) calendar days, or to proceed with award to the next lowest responsive bidder, whichever is determined by the Director of Purchases to be in the best interest of the State.

C. HEADINGS. Headings used in this Agreement are informational and not to be considered persuasive or determinative of any clause or matter in dispute.

IX. SIGNATURES

In agreement to the terms of this Agreement, we set our hand this _____th day of _____ 2016 under the authority and power granted to us by virtue of our position or office.

For the Kansas Water Office

For the City of Lawrence, Kansas

Tracy Streeter
Director, Kansas Water Office

Thomas M. Markus
City Manager

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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. 06-12), 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. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in 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 the 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:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined 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.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

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 of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the 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 and its agencies 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 and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor 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."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.