

INDEPENDENCE CITY COMMISSION

SPECIAL SESSION AGENDA

September 1, 2023

9:30 AM

Civic Center Memorial Hall

To participate by conference call:
1 785-289-4727 Conference ID: 395 516 024#

The Agenda shall be as follows:

- I. SPECIAL SESSION
 - A. Call to Order
- II. ITEMS FOR COMMISSION ACTION
 - A. Consider authorizing the Mayor to sign a surplus water purchase contract with the Kansas Water Office.
- III. EXECUTIVE SESSION
 - A. Discussions prior to acquisition of real estate.
- IV. ADJOURNMENT



REQUEST FOR COMMISSION ACTION
CITY OF INDEPENDENCE
September 1, 2023

Department Public Works & Utilities

Director Approval John Garris

AGENDA ITEM Consider authorizing the Mayor to sign a surplus water purchase contract with the Kansas Water Office.

SUMMARY RECOMMENDATION Authorize Mayor to sign contract.

BACKGROUND On August 31, 2023 the Kansas Water Office informed the City that on approximately September 4, 2023, that the 60,000,000 gallons of purchased water would be fully consumed. Since the City had been aware of this, discussions and preparation for a Surplus Water Marketing Contract had already taken place over the course of the last several weeks, working closely with the Kansas Water Office. An additional quantity of 60,000,000 gallons was suggested by the Kansas Water Office, and is the quantity reflected in the contract. It is anticipated by the Kansas Water Office that this would be sufficient water for the City for the next seven weeks as a minimum. With increased precipitation, this quantity may be sufficient to carry the City until 2024.

This is a contract for purchase of water in 2023 only. It is substantially similar to our water marketing contract but varies due to the short term nature of the contract. The City also has an application in for 200,000,000 gallons of water, but that contract has yet to be executed.

FINANCIAL INFORMATION The cost of water is \$0.473 per thousand gallons, and will be paid for via water revenues that would otherwise not be possible.

SUGGESTED MOTION I move to authorize execution of the Surplus Water Contract.

SUPPORTING DOCUMENTS

1. con_Independence_SurplusWaterPurchaseContract_23-4_083123

KANSAS WATER OFFICE

SURPLUS WATER PURCHASE CONTRACT NO. 23-4

This contract is executed and entered into this 31st day of August, 2023, by and between the State of Kansas, as represented by the Kansas Water Office (hereinafter referred to as the “State”), an authorized agency to enter such contracts for the State of Kansas and the City of Independence, Montgomery County, Kansas, (hereinafter referred to as the “Purchaser”).

RECITALS

WHEREAS, the Purchaser desires to purchase a supply of Raw Water for a municipal and industrial use to supplement its existing Water Rights during times of short supply; and

WHEREAS, the State has signed Agreements (Contract Nos. DACW56-76-C-0132 and DACW56-96-WS-0005) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), for water supply storage space in the Reservoir; and

WHEREAS, the State has filed appropriate water reservation rights with priority dates of March 27, 1974 and December 15, 1994, authorizing it to divert and store water in the conservation storage water supply capacity in the Reservoir; and

WHEREAS, the Director is authorized by K.S.A. 74-2615, and by K.S.A. 82a-1305, to negotiate contracts for the sale of water from the conservation storage water supply capacity in the Reservoir committed to the State; and

WHEREAS, the Purchaser filed an appropriate application on August 28, 2023, with the State to negotiate the purchase of Raw Water from the Reservoir, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.*; and

WHEREAS, on December 5, 2022, the Authority approved the report, Surplus Water Available in Water Marketing Program Lakes, Calendar Year 2023, granting permission to the Director to enter into surplus water purchase contracts in Calendar Year 2023; and

WHEREAS, the Purchaser's immediate water supply needs can be provided from the Reservoir;
and

WHEREAS, the withdrawal of up to 60 million gallons of Raw Water from the Reservoir for use by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, the quantity of Raw Water from the Reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity in the Reservoir that is available to the State for use under the water marketing program through a drought having a two percent chance of occurrence in any one year.

NOW, THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- a. "Authority" means the Kansas Water Authority, per K.S.A. 74-2622, or its successor.
- b. "Contract Quantity" means the quantity of Raw Water from the State's conservation storage water supply capacity in the Reservoir as set out in Article 6, paragraph (a).
- c. "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- d. "Minimum Charge" means the annual payment set out in Article 7 paragraph (b).
- e. "Party" or "Parties" means the State of Kansas, as represented by the Kansas Water Office, and the Purchaser.
- f. "Point of withdrawal from the reservoir" means the point at which water is taken from the Reservoir by pump, siphon, canal, or any other device or released through the dam by gates, conduits, or any other means.

- g. "Point of redirection" means the point where released water is taken for beneficial use from the watercourse by which it is transported.
- h. "Raw Water" refers to untreated water from the Reservoir.
- i. "Reservoir" means Elk City Lake in Montgomery County, Kansas.
- j. "Water Right" and "Water Rights" means vested and appropriation water rights established pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall begin on the date of the contract execution and shall end December 31, 2023. The Purchaser may begin withdrawing Raw Water under this contract on at any time after the execution of this contract.

ARTICLE 3. UNITED STATES APPROVAL

- a. Except when the Point of withdrawal from the reservoir is a release through the dam by gates or conduits owned and operated by the United States, the Purchaser shall secure the right from the United States to construct, modify, alter, or maintain installations and facilities at the Point of Withdrawal from the Reservoir as the Purchaser shall deem necessary to effectuate the terms of this contract when any such installations and facilities are on federal lands.
- b. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.
- c. The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the United States for rights-of-way across, in, and upon federal land required for intake, transmission of Raw Water, and necessary appurtenances by and for the benefit of the Purchaser.

ARTICLE 4. COMPLIANCE WITH KANSAS STATUTES AND REGULATIONS

- a. This contract is subject to all applicable federal and state statutes and regulations including specifically, but not by way of limitation, the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*; the

State Water Resource Planning Act, K.S.A. 82a-901, *et seq.*; the State Water Plan, K.S.A. 82a-927, *et seq.*; and the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.* All references to statutes, rules, and regulations in this contract include any applicable amendments enacted after the execution of this contract.

- b. The Parties agree to comply with all applicable statutes and regulations.

ARTICLE 5. QUANTITY OF WATER

a. Contract Quantity. During the term of this contract, defined in Article 2, and subject its conditions, the Purchaser is entitled to withdraw not more than 60 million gallons of Raw Water from the State's conservation storage water supply in the Reservoir. If the Purchaser does not withdraw the entire Contract Quantity, the unused amount of water shall revert to the State and the Purchaser shall forfeit any and all rights to said water which the Purchaser may have acquired pursuant to this contract.

b. Review and Adjustment. At any time during the term of this contract, the Director may review the quantity and purposes for which water is used. Additionally, the Director may adjust the total amount of water contracted for if the Purchaser does not begin payment for the surplus water under contract and another water user is ready, willing, and able to contract for such water.

d. The Purchaser may redivert Raw Water withdrawn from the Reservoir in accordance with the terms of this contract without obtaining a permit or Water Right under the Kansas Water Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest including vested water rights, water appropriation rights, and approved applications for permit to appropriate water.

ARTICLE 6. PRICE OF WATER

a. Price. The Purchaser agrees to pay the State, at the rate set in accordance with K.S.A. 82a-1306, for each one thousand (1,000) gallons of Raw Water withdrawn or Raw Water which must be paid for under terms of this contract; provided, however, that the Purchaser is obligated and agrees to pay the Minimum Charge in accordance with this Article regardless of the quantity of Raw Water actually

withdrawn, except as provided in Article 13. The rate for Raw Water which must be paid for under terms of this contract shall be \$0.473 for each one thousand (1,000) gallons during calendar year 2023.

b. Minimum Charge. The Purchaser agrees to pay to the State a Minimum Charge whether or not water is withdrawn during any calendar year during the term of this contract. The Minimum Charge for each calendar year shall be determined as provided in K.S.A. 82a-1306. The Minimum Charge for calendar year 2023 and each succeeding calendar year shall be the sum of the following two components:

(1) fifty (50) percent of the Contract Quantity multiplied by the rate established in accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article; and

(2) a charge on the remaining fifty (50) percent of the Contract Quantity computed by multiplying the net amount of moneys advanced from state funds for costs incurred and associated with that portion of the conservation storage water supply under the State Water Marketing Program by the average rate of interest earned during the past calendar year by the Pooled Money Investment Board on thirty (30) day repurchase agreements.

ARTICLE 7. PURPOSE AND PLACE OF USE

a. Purpose. Water purchased under this contract shall be used for purposes which are stated in the recitals.

b. Place of Use. The place of use for water purchased under this contract shall be within and in the immediate vicinity, as defined at K.A.R. 5-1-1(mm), of the City of Independence, Montgomery County, Kansas and within and in the immediate vicinity of each of the Purchaser's current water supply customers, which are Montgomery County Rural Water District Nos. 1 – 5 and 8.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any Raw Water under this contract to any person or entity located outside the place of use defined in paragraph (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to

sell Raw Water purchased under this contract to any such person or entity outside the defined place of use, the Purchaser shall, before execution thereof, submit a copy of such contract to the Director for review by the Authority. The Purchaser agrees not to execute and enter into any such contracts unless approved by the Authority.

ARTICLE 8. BILLING AND PAYMENT SCHEDULE

a. Payments. Remittance of the Minimum Charge, as provided in Article 7 (b) and this Article shall be paid to the State in either one annual payment on or before the due date established in Article 9, or in equal monthly installments during the calendar year in which the Minimum Charge is due, whether or not water is withdrawn during the calendar year.

b. Determination of Charges. Charges for Raw Water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a. The Purchaser acknowledges and agrees that rate computations are subject to change, based on subsequent amendments to State statutes that may affect the terms of this contract.

c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all Raw Water withdrawn under terms of this contract up to the maximum quantity obligated by this contract (60 million gallons per year). In no event shall the Purchaser be permitted to withdraw more than the maximum of 60 million gallons in any one calendar year.

d. Initial Minimum Charge. The initial Minimum Charge shall become due within 30 days after the execution of this contract. Remittance of the initial Minimum Charge shall be in accordance with paragraph (a) of this Article. Payment of the initial Minimum Charge shall entitle the Purchaser to receive up to one-half (1/2) of the maximum annual quantity of Raw Water in 2023 as set forth in Article 6, without additional charge.

f. Water in Excess of Minimum. Within thirty (30) days after the end of each calendar year during the term of this contract, the State shall bill the Purchaser for any Raw Water withdrawn during the calendar year in excess of the amount of Raw Water used to compute the Minimum Charge. The Purchaser shall be given credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State General Fund for the costs incurred and associated with providing fifty (50) percent of the total annual amount of water contracted for purchase during that calendar year. Remittance for payments for Raw Water withdrawn in excess of the quantity used to calculate the Minimum Charge shall be paid to the State in full within thirty (30) days after receipt of a bill from the State.

g. Overpayment or Underpayment. If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges required by this contract, such overpayment shall be reimbursed or underpayment shall be billed, as the case may be. The State shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

h. Adjustment for Apportionment. In the event the Purchaser is unable in any year to withdraw the quantity used to calculate the Minimum Charge due to an apportionment under paragraph (c) of Article 13, the amount of the Minimum Charge actually paid in excess of the charge for the amount of Raw Water actually withdrawn by Purchaser shall be credited to reduce the Minimum Charge obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser fails to make any of the payments when due, then the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-1317. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the State that might result from such default by the Purchaser.

j. Payments. Any payments due and payable to the Kansas Water Office under the terms of this contract shall be transferred electronically under such arrangements as the Purchaser and the State determine or shall be sent to:

Kansas Water Office
Attention: Accounts Payable/Water Marketing
900 SW Jackson Street, Suite 404
Topeka, KS 66612

ARTICLE 9. POINT OF WITHDRAWAL AND REDIVERSION

- a) The Point of withdrawal from the reservoir shall be at the release gates of Elk City Lake.
- b) The Purchaser's Point of rediversion shall be the point or points of diversion in the Verdigris River authorized by the Purchaser's Water Rights located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 30, Township 32 South, Range 16 East, 4,310 feet North and 1,400 feet East of the Southeast Corner of said Section, in Montgomery County, Kansas.

ARTICLE 10. METERING OF WATER

- a) The Purchaser shall, at its own expense, furnish, install, operate, and maintain a commercial measuring device at the Point of rediversion that complies with the Kansas Water Appropriation Act and the rules and regulations adopted by the Kansas Department of Agriculture, Division of Water Resources ("DWR").
- b) The Purchaser shall test and calibrate all measuring devices upon installation and thereafter as necessary or whenever requested by the Director, but not more frequently than once every twelve (12) months. A measuring device that meets the standards set forth in DWR regulations shall be deemed to be accurate. Testing and calibration of measuring devices must comply with DWR regulations.
- c) The previous readings of any measuring device disclosed by a test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half (1/2) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

- d) If any measuring device fails to register for any period, the amount of Raw Water furnished during such period shall be determined by the Director, in consultation with the Purchaser.
- e) During the withdrawal of Raw Water the Purchaser shall, upon the Director's request, read the measuring device and send such readings to the Director on a weekly basis.
- f) The Purchaser shall provide to the State monthly reports of all water diverted from any sources under authority of Water Rights acquired and subject to Article 6 paragraph (c).
- g) Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.
- h) The State may measure withdrawals by other suitable means to verify the accuracy of the Purchaser's measuring device or to measure the amount of rediverted Raw Water when the Purchaser's measuring device fails to register.

ARTICLE 11. WATER WITHDRAWAL

The Purchaser shall notify the Director prior to any withdrawal of Raw Water. At that time, the Purchaser shall provide such notification, in writing, of the estimated amounts, dates, and rates of withdrawal. In no event, during the term of this contract, shall the Purchaser withdraw Raw Water in excess of the maximum daily rate of 3.0 million gallons.

ARTICLE 12. CONTINUITY OF WATER SERVICE

a. The Director shall make all reasonable efforts to perfect and protect the water reservation rights necessary for the satisfaction of the State's water supply commitment. In the event it becomes necessary for any reason to apportion the water among all of the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir, or to temporarily discontinue the furnishing of water to such persons, the Director will give each person oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.

b. The Director, Kansas Water Office, and the Authority shall not be responsible for, or have any legal liability for any insufficiency of water, or for the apportionment thereof, and the duty of the Director, Kansas Water Office, and the Authority to furnish water is specifically subject to the following conditions:

(1) If the total amount of water contracted for withdrawal by all purchasers from the Reservoir in any year is greater than the supply available from the conservation storage water supply in the Reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor, as may best provide for the health, safety, and general welfare of the people of Kansas as determined by the Authority.

(2) Purchaser herein acknowledges that the Purchaser's allocation or purchase amount of water under this short-term contract is subordinate, inferior, and/or secondary to those other purchasers of water holding multi-year contracts with the State, and therefore, those multi-year contracts take priority in the event the Director must make an apportionment or allocation of water among water storage or water purchase contract holders in an emergency situation or as otherwise described under the terms of this contract.

(3) If the United States temporarily discontinues or reduces water storage available to the State in the Reservoir under the State's agreement with the United States of America for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by the United States of America, the Director will apportion the available water among the persons having contracts for water from the conservation storage water supply in the Reservoir as determined by the Director.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the Reservoir, the Director, with the approval of the Authority, will apportion any available water among the

persons having contracts to purchase water from the conservation storage water supply in the Reservoir as may best provide for the health, safety, and general welfare of the people of Kansas.

c. In the event the Director finds it necessary to apportion the available water from the conservation storage water supply in the Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable, during any year, to receive the amount of water that has been purchased by payment of the Minimum Charge, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 13. LIABILITY

a. The Parties acknowledge that this contract is for Raw Water from the conservation storage water supply in the Reservoir. The State, the Director, the Authority, or any employee, agent, or agency of the State of Kansas, makes no guarantee for, nor assumes any liability for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the Point of withdrawal from the reservoir except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, and the Purchaser shall hold the State harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of Raw Water beyond the Point of withdrawal from the reservoir. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 6.

b. In addition, neither the Director nor the Authority shall be liable for any claim by Purchaser arising out of the quality of the Raw Water in the Reservoir or at the Point of redirection. The Purchaser shall hold the State, its agencies, employees, and agents harmless from or on account of any and all damage to Purchaser of any nature whatsoever arising out of or connected with the quality of the Raw Water in the Reservoir, at the Point of withdrawal from the reservoir or at the Point of redirection.

ARTICLE 14. AMENDMENT

The contract may be amended or nullified by written agreement of the Parties, as provided in K.S.A. 82a-1316.

ARTICLE 15. ASSIGNMENT OF CONTRACT

a. The Purchaser may not assign, sell, convey, or transfer all or any part of this contract, or any interest therein, unless and until the same is approved by the Director and the Authority pursuant to K.S.A. 82a-1316 and K.A.R. 98-5-5.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*

ARTICLE 16. RIGHT OF FIRST REFUSAL

The provisions of K.S.A. 82a-1305(a) do not apply to the disposition of surplus water. When this contract expires, the Purchaser shall not be entitled to any new offering of water before the Director may offer the same to any other applicant.

ARTICLE 17. WATER CONSERVATION PLAN

The Purchaser shall adopt and implement a water conservation plan, prepared in accordance with the guidelines developed and maintained by the Kansas Water Office.

ARTICLE 18. MISCELLANEOUS PROVISIONS

a. Severability. In the event any provisions of this contract, or any part of any provision of this contract, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms that can be given effect without the invalid provision or portion of such provision, and to that end the terms of this contract are intended to be severable.

b. Choice of Law, Jurisdiction, and Venue. Disputes arising out of this contract shall be determined under the laws of the State of Kansas, in the district courts of that state, sitting in Shawnee County, Kansas.

c. Kansas Contract Provisions Attachment. The provisions of Form DA-146a, which is attached, are hereby incorporated in this contract and made a part thereof by reference.

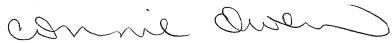
d. Headings. Headings used in this contract are informational and not to be considered persuasive or determinative of any clause or matter in dispute.

e. Merger. This contract contains the full understanding of the Parties with respect to the matters hereto and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and may not be amended or modified except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties affirm and acknowledge the terms and conditions agreed to above, and further affirm that they have the authority to bind the Parties by their signatures and have executed this contract as of the day and year first above written.

THE STATE OF KANSAS, BY:

PURCHASER, BY:



Connie Owen
Director, Kansas Water Office

Louis Ysusi, Mayor
City of Independence, Montgomery County, Kansas

CONTRACTUAL PROVISIONS ATTACHMENT A

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 31st day of August, 20 23.

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.