



# COUNTY LEGISLATURE JACKSON COUNTY, MISSOURI

MARY JO SPINO

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CLERK OF THE COUNTY LEGISLATURE  
415 East 12th Street  
Kansas City, MO 64106

201 West Lexington, 2<sup>nd</sup> Floor  
Independence, MO 64050

## April 5 – 11, 2024

4-05-2024 Friday

NO MEETINGS –

4-08-2024 Monday

NO ANTI-CRIME, BUDGET, DIVERSITY, EQUITY & INCLUSION, HOUSING & HOMELESSNESS, INTER-GOVERNMENTAL AFFAIRS, PUBLIC WORKS, RULES, VETERANS, OR 911 OVERSIGHT COMMITTEE MEETINGS –

10:30 A.M.

Health & Environment Committee Meeting –  
Jackson County Courthouse, 415 East 12<sup>th</sup> Street,  
2<sup>nd</sup> Floor, Kansas City Legislative Assembly Area

The Health & Environment Committee will have a public hearing.

2:20 P.M.

Justice & Law Enforcement Committee Meeting –  
Jackson County Courthouse, 415 East 12<sup>th</sup> Street,  
2<sup>nd</sup> Floor, Kansas City Legislative Assembly Area

2:30 P.M.

Finance & Audit Committee Meeting –  
Jackson County Courthouse, 415 East 12<sup>th</sup> Street,  
2<sup>nd</sup> Floor, Kansas City Legislative Assembly Area

2:40 P.M.

Land Use Committee Meeting –  
Jackson County Courthouse, 415 East 12<sup>th</sup> Street,  
2<sup>nd</sup> Floor, Kansas City Legislative Assembly Area

3:00 P.M.

**LEGISLATIVE MEETING -  
Jackson County Courthouse, 415 East 12<sup>th</sup> Street,  
2<sup>nd</sup> Floor, Kansas City Legislative Assembly Area**

**Closed meeting per Resolution #21599**

4-09-2024 Tuesday

NO MEETINGS –

4-10-2024 Wednesday

NO MEETINGS –

4-11-2024 Thursday

NO MEETINGS –

Persons with disabilities wishing to participate in the above meetings and who require reasonable accommodation may call the County Clerk's Office at 881-3242 or 1-800-735-2466 (Missouri Relay). Forty-eight (48) hours' notice is required. To put information on the Activity Calendar, please contact the County Clerk's Office by NOON Wednesday of each week.

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**AN ORDINANCE** appropriating \$500,000.00 from the undesignated fund balance of the 2024 Grant Fund in acceptance of the 2023 Department of Mental Health grant awarded to the Jackson County Detention Center.

**ORDINANCE NO. 5842**, April 8, 2024

**INTRODUCED BY** Venessa Huskey, County Legislator

WHEREAS, the Missouri Department of Mental Health (DMH), has awarded the Jackson County Detention Center (JCDC) a Department of Mental Health grant in the amount of \$500,000.00; and,

WHEREAS, the grant will be used to house and treat DMH inmates who are awaiting transfer to various mental health institutions; and,

WHEREAS, these funds will be used to treat DMH inmates at JCDC until they are able to stand trial or a bed is available at one of the mental health facilities regulated by DMH; and,

WHEREAS, inmates will be receiving in custody competency restoration services from mental health professionals while incarcerated at JCDC; and,

WHEREAS, an appropriation is necessary in order to place the grant funds in the proper spending accounts; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, that the following transfer within and appropriation from the undesignated fund balance of the 2024 Grant Fund be and hereby are made:

<u>DEPARTMENT/DIVISION</u>	<u>CHARACTER/DESCRIPTION</u>	<u>FROM</u>	<u>TO</u>
Grant Fund Corrections Department 010-2701	45300 – Increase Revenues \$500,000		
Non-Specific 010-9999	32810 – Undesignated Fund Balance		\$500,000
010-9999	32810 – Undesignated Fund Balance	\$500,000	
Corrections Department 010-2701	56090 – Health & Social Services		\$500,000

and,

BE IT FURTHER ORDAINED that the County Executive and any and all other County officials be and hereby are authorized to execute any and all documents necessary to the acceptance of the 2023 Department of Mental Health grant.

APPROVED AS TO FORM:

Bryan Covinsky  
Bryan Covinsky (Apr 4, 2024 09:49 CDT)

\_\_\_\_\_  
County Counselor

I hereby certify that the attached ordinance, Ordinance No. 5842 introduced on April 8, 2024, was duly passed on \_\_\_\_\_, 2024 by the Jackson County Legislature. The votes thereon were as follows:

Yeas \_\_\_\_\_

Nays \_\_\_\_\_

Abstaining \_\_\_\_\_

Absent \_\_\_\_\_

This Ordinance is hereby transmitted to the County Executive for his signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance No. 5842.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frank White, Jr., County Executive

Funds sufficient for this appropriation are available from the sources indicated below.


ACCOUNT NUMBER: 010 2701 45300  
ACCOUNT TITLE: Grant Fund  
Corrections Department  
Increase Revenues  
NOT TO EXCEED: \$500,000.00

ACCOUNT NUMBER: 010 9999 32810  
ACCOUNT TITLE: Grant Fund  
Undesignated Fund Balance  
NOT TO EXCEED: \$500,000.00

04/04/2024

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Date

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Sylvia Stevenson (Apr 4, 2024 10:01 CDT)

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Chief Administrative Officer



# Jackson County, Missouri

## Request for Legislative Action

**REQUESTED MEETING DATE:** \_\_\_\_\_ **SPONSOR:** Venessa Huskey

*To be completed by the County Counselor's Office:*

**NUMBER:** 5842 **ASSIGNED MEETING DATE:** 04/08/2024

**STAFF CONTACT:** Deloris Wells **PHONE:** 816-881-4210

**EMAIL:** Dwells@jacksongov.org

**DEPARTMENT:** Jackson County Sheriff's Office Detention Center

**TITLE:** The Jackson County Sheriff's Office Detention Center has been selected to receive funding from the Department of Mental Health to provide mental health treatment to selected inmates onsite at the detention center. The State will reimburse the County for holding DMH committed inmates (JCDC inmates who are ordered to the state hospital but are not transferred due to unavailable beds at the state hospital). These are the inmates that will be receiving the in-custody competency restoration services. This Resolution is to Authorize the County Executive to execute the contract for the award of the grant funding that will be based on the daily rate times **+**

**SUMMARY:**

A Resolution appropriating up to \$500,000.00, from the undesignated fund balance of the 2024 Grant Fund in acceptance of the Jackson County Sheriff's Office, Detention Center Grant to hold DMH committed inmates, JCDC inmates who are ordered to the state hospital but are not transferred due to unavailable beds at the state hospital.

These inmates will be receiving the in-custody competency restoration services. This Resolution is to Authorize the County Executive to execute the contract for the award of the grant funding that will be based on the daily rate times the total number of qualified participants but shall not exceed \$500,000.00. The Department of Mental Health requires a signed contract in order to finalize process.

The Detention Center shall be paid the firm, fixed price of \$90 per IST defendant per day, with a maximum of ten (10) IST defendants per day for a daily maximum of \$900 per day for services provided pursuant to this contract.

This contract has been reviewed and approved by the legal department. This Resolution is to Authorize the County Executive to execute the contract for the award of the grant funding that will be based on the daily rate times the total number of qualified participants but shall not exceed \$500,000.00.

**FINANCIAL IMPACT: NO**

**YES**

**Amount**

**Fund**

**Department**

**Line-Item Detail**

\_\_\_\_\_

**ACTION NEEDED:** APPROPRIATE FUNDS

**ATTACHMENT(S):**

## Supplemental Appropriation Request Jackson County, Missouri


Funds sufficient for this appropriation are available from the source indicated below.

Date: March 19, 2024

ORD # 5842

Department / Division	Character/Description	From	To
<b>Grant Fund - 010</b>			
2701 - Corrections Department	45300 - Increase Revenues	500,000	
9999 - Non Specific	32810 - Undesignated Fund Balance		500,000
9999 - Non Specific	32810 - Undesignated Fund Balance	500,000	
2701 - Corrections Department	56090 - Health & Social Services		500,000
<div style="border: 1px solid green; border-radius: 10px; padding: 5px; display: inline-block;"> <b style="color: green;">APPROVED</b>  <i>By Sarah Matthes at 2:31 pm, Mar 19, 2024</i> </div>			
Budgeting		\$ 1,000,000	\$ 1,000,000



<b>Acknowledgement of Contract (AOC)</b>	<i>Contract #:</i> <b>AOC2438_____</b>
 <b>Missouri Department of Mental Health</b> <b>1706 East Elm Street</b> <b>P.O. Box 687</b> <b>Jefferson City, MO 65102</b>	<i>Contract Title:</i> <b>Secure Detention Services</b> <i>Contract Period:</i> <b>January 1, 2024 through June 30, 2024</b>

*The Missouri Department of Mental Health desires to contract for the services described herein. All terms, conditions, and prices contained herein shall govern the performance of this contract.*

**Contractor Information**

Contractor Name: **Jackson County Sheriff**  
Mailing Address: **4001 NE Lakewood Ct**  
City, State Zip: **Lees Summit, MO 64064-1815**

*Not For Profit Status:* (Check box if your organization is a not-for profit 501(c) entity)

*The undersigned hereby agrees to provide the services and/or items, at the prices stated, pursuant to the requirements of this document and further agrees that when this document is countersigned by an authorized official of the Missouri Department of Mental Health, a binding contract shall exist between the Contractor and the Department of Mental Health.*

*The authorized signer of this document certifies that the Contractor named below and each of its principals (as defined by 45 CFR 76) are not suspended or debarred by the federal government.*

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***In witness thereof, the parties below hereby execute this agreement.***

\_\_\_\_\_  
Authorized Signature for the Contractor                      Name and Title                      Date

\_\_\_\_\_  
Authorized Signature for the Department of Mental Health                      Date

## **1. INTRODUCTION AND BACKGROUND INFORMATION**

- 1.1 The Missouri Department of Mental Health (Department) hereby enters into this contract with the Jackson County Sheriff (Contractor), for the purchase of services in accordance with the provisions and requirements stated herein.
- 1.2 The mission of the Department is the prevention, treatment and promotion of understanding for Missourians with mental illnesses, developmental disabilities, and addictions.
- 1.3 The contract period shall be from **January 1, 2024** through **June 30, 2024**
- 1.4 This contract is established as an inter-governmental contract under the authority of RSMo 34.046.
- 1.5 The Contractor shall review this document, sign and submit the executed signature page and exhibits to the Department of Mental Health, Purchasing and General Services Unit, 1706 East Elm, P.O. Box 687, Jefferson City, MO 65102.

## **2. CONTRACTUAL REQUIREMENTS**

- 2.1 The Contractor shall provide services in accordance with the provisions and requirements stated herein, to the sole satisfaction of the Department. Services purchased by the Department shall consist only of those services described herein.

### **2.2 Contract Period**

- 2.2.1 The original contract period shall be as stated on the cover page of this contract. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Department shall have the right, at its sole option, to renew the contract for additional one-year periods, or any portion thereof. In the event the Department exercises such right, all terms and conditions, requirements and specifications of the contract, including prices, shall remain the same and apply during renewal periods.

- 2.3 **Coordination** - The Contractor shall coordinate all contract activities with designated representatives of the Department.

- a. Within five (5) days of contract award, the Contractor shall provide the Department with the name, address, e-mail address, and telephone number of the Contractor's representative servicing the contract.

- 2.4 **Correspondence** - Electronic mail (e-mail) will be utilized to transmit contract documents and other correspondence from the Department to the Contractor. The Contractor shall ensure the timely review and response to e-mailed documents and information.

- 2.4.1 The Contractor shall encrypt any electronic correspondence containing information confidential by law.

### **2.5 Confidentiality**

- 2.5.1 The Contractor shall agree and understand that all discussions with the Contractor and all information gained by the Contractor as a result of the Contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.
- 2.5.2 If required by the state agency, the Contractor and any required Contractor personnel must sign specific documents regarding confidentiality, security, or other similar documents upon request. Failure of the Contractor and any required personnel to sign such documents shall be considered a breach of contract and subject to the cancellation provisions of this document.

### **2.6 Business Associate Provisions**

- 2.6.1 The Department is subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all regulations promulgated pursuant to authority granted therein.
- 2.6.2 Unless the Contractor declares itself to be a Covered Entity as defined in HIPAA regulations, the Contractor shall be a "Business Associate" of the Department, as such term is defined in the Code of Federal

Regulations (CFR) at 45 CFR 160.103, and the Contractor shall comply with the provisions of the Business Associate Agreement attached hereto as Attachment A.

- a. The Contractor must notify the Department, in writing, if declaring itself to be a Covered Entity as defined in HIPAA regulations.

**2.7 Affidavit of Work Authorization and Documentation** - Pursuant to section 285.530, RSMo, if the Contractor meets the section 285.525, RSMo definition of a "business entity" (<https://revisor.mo.gov/main/OneSection.aspx?section=285.525>), the Contractor must affirm the Contractor's enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services requested herein.

- a. Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; and
- b. Provide to the Department the documentation required in the Exhibit #1, titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; and
- c. Submit to the Department a completed, notarized Affidavit of Work Authorization provided in the Exhibit #1, titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

**2.8 Debarment Certification** - The Contractor must complete and submit Exhibit #2, Certification Regarding Debarment, prior to award of contract, certifying that the Contractor, nor or any of its principals, are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs.

- a. In the event the Contractor or any of its principals become suspended or debarred during the contract period, the Contractor shall immediately send written notification to the Department. The Department reserves the right to terminate the contract due to suspension or debarment of the Contractor or its principals, or failure by the Contractor to provide written notification of suspension or debarment.

**2.9 Contractor's Personnel** - The Contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), P.L. 104-208, 110 Stat. 3009, and INA Section 274A (8 U.S.C. §1324a).

- a. If the Contractor is found to be in violation of this requirement or the applicable state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the Contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the Contractor from doing business with the state. The state may also withhold up to twenty-five percent (25%) of the total amount due to the Contractor.
- b. The Contractor shall fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.

**2.10 Sub-contractors** - Pursuant to subsection 1 of section 285.530, RSMo, no Contractor or sub-contractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. In accordance with sections 285.525 to 285.550, RSMo a general Contractor or sub-contractor of any tier shall not be liable when such Contractor or sub-contractor contracts with its direct sub-contractor who violates subsection 1 of section 285.530, RSMo, if the contract binding the Contractor and sub-contractor affirmatively states that:

- a. The direct sub-contractor is not knowingly in violation of subsection 1 of section 285.530, RSMo, and
- b. Shall not henceforth be in such violation, and

- c. The Contractor or sub-contractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct sub-contractor's employees are lawfully present in the United States.

## **2.11 Anti-Discrimination Against Israel Act**

- 2.11.1 If the Contractor meets the definition of a company as defined in section 34.600, RSMo, and has ten or more employees, the Contractor shall not engage in a boycott of goods or services from the State of Israel; from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or from persons or entities doing business in the State of Israel as defined in section 34.600, RSMo.
- 2.11.2 If the Contractor meets the definition of a company as defined in section 34.600, RSMo, and the company's employees increases to ten or more during the life of the contract, then the Contractor shall submit to the Department a completed Box C of the exhibit titled, Anti-Discrimination Against Israel Act Certification, and shall comply with the requirements of Box C.
- 2.11.3 If during the life of the contract, the Contractor's business status changes to become a company as defined in section 34.600, RSMo, and the company has ten or more employees, then the Contractor shall comply with, complete, and submit to the Department a completed Box C of the exhibit #3 titled, Anti-Discrimination Against Israel Act Certification.

## **3. SPECIFIC PERFORMANCE REQUIREMENTS**

### **3.1 Contractor Responsibilities**

- 3.1.1 The Contractor shall provide secure detention services for individuals ordered by a Circuit Court to the Department whom are Incompetent to Stand Trial, herein after referred to as (IST defendants), following a finding of incompetent to proceed and a recommendation for jail-based competency restoration until such time the IST defendant is restored to competency or otherwise ordered by the court.
  - a. The Department will provide the Contractor with reasonable notice of receiving or discharging IST defendants. The Contractor understand and agrees that no admissions or discharges, except to and from the custody of Department, will occur without court orders.
- 3.1.2 The Contractor shall keep the IST defendant population separated from the general inmate population and provide adequate staff to ensure defendants are appropriately monitored 24/7.
- 3.1.3 The Contractor must have the capacity to individually isolate and monitor IST defendants who demonstrate credible suicidal thoughts or actions.
- 3.1.4 The Contractor must have the capability to intercept mail and block outgoing telephone calls to known victims of IST defendants and persons not identified on the IST defendant's contact list.
- 3.1.5 The Contractor shall make the same exercise, recreational and religious opportunities separately available to IST defendants as are available to the general inmate population.
- 3.1.6 The Contractor must have a written policy providing for the timely screening, evaluation and treatment of IST defendants requesting medical services. The policy must provide for documentation of IST defendants medical service requests, Contractor response to the requests, documentation of the evaluation and screening medical services provided, and retention of documentation and medical records.
- 3.1.7 The Contractor shall provide IST defendants with routine healthcare services, including, but not limited to, prescription medications and other routine medical care. Routine healthcare must be at least equivalent to what is currently provided to the general inmate population.
- 3.1.8 The Contractor must have policies and procedures that address:
  - a. Dispensing, distribution, and monitoring of prescription medications; and
  - b. Treatment of acute and chronic psychiatric issues.
- 3.1.9 The Contractor must have written policies and procedures for addressing IST defendant grievances regarding the conditions of confinement and allegations of violations of rights. The policy shall provide for documentation of grievances, response to grievances, and retention of documentation of grievances.

- 3.1.10 The Contractor must have a plan to address behavior management of IST defendants that are in conflict and who may become combative with other IST defendants, inmates or Contractor staff.
- 3.1.11 The Contractor shall refer to the Department any IST defendant for whom there are concerns as to the need for acute inpatient psychiatric care.
- 3.1.12 The Contractor shall be responsible for providing transportation and security for IST defendants for all healthcare related trips and hospital stays.
- 3.1.13 The Contractor shall notify the Department if any of the following occurs:
  - a. Any suicide attempts or suicidal threats by an IST defendant.
  - b. Allegations of abuse or neglect against the staff by an IST defendant.
  - c. Any allegation or instance of physical threat, abuse or assault to or by an IST defendant.
  - d. Any allegation or instance of sexual threat, abuse, or assault to or by an IST defendant.
  - e. When an IST defendant is put into an isolation room.
  - f. Any medical issues that are potentially serious.
  - g. Any time an IST defendant is hospitalized.
  - h. When an IST defendant is transferred to another facility, including when the IST defendant is moved to the county of jurisdiction for trial.
- 3.1.14 The Contractor shall provide IST defendants with meals, clothing, hygiene products and normal incidentals.
- 3.1.15 The Contractor and the Department shall mutually agree on the allowable amount and type of property that IST defendants may bring with them when transferred to the Contractor's facility from the Department.

## **3.2 Department Responsibilities**

- 3.2.1 The Contractor understand and agrees that the Department will be responsible for the mental health treatment and psychiatric medications for IST defendants. The Contractor will allow access to the IST defendants by DMH Certified Community Behavioral Health Organizations (CCBHO), staff as well as the DMH Forensic Mobile Team.
- 3.2.2 The Contractor understands and agrees, upon approval of the Department, the Department will be responsible for the cost of any in-patient stay, including any emergency room costs associated with an in-patient stay.

## **4. GENERAL CONTRACTUAL REQUIREMENTS**

*(rev 5-15-17)*

### **4.1 General**

- 4.1.1 The contract shall consist of any and all of the following documents, as applicable:
  - a. An original contract document; and
  - b. Any subsequent amendments to the contract.
- 4.1.2 This contract shall be construed according to the laws of the State of Missouri and shall govern the terms and conditions of the contracted services provided to clients of the Department by the Contractor.
  - a. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the Contractor and the state.
  - b. The contract will be read and enforced as though every provision of law and clause required by law to be inserted herein were included. If any such provision is not inserted, then upon the notification of either party, the contract will be amended to make such correction.
- 4.1.3 The Contractor shall comply with all local, state and federal laws and regulations related to the performance of the contract to the extent that these may be applicable.

- 4.1.4 The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
- 4.1.5 This contract shall constitute an assignment by the Contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular supplies and/or services purchased or procured by the Contractor in the fulfillment of the contract.
- 4.1.6 By signing this contract the Contractor certifies that the Contractor and each of its principals (owners, director and others as defined by 45 CFR 76) are not suspended or debarred from contracting with the federal government.
- a. In the event the Contractor or any of its principals become suspended or debarred during the contract period, the Contractor shall immediately send written notification to the Department.
  - b. Suspension or debarment of the Contractor, or failure by the Contractor to provide written notification of suspension or debarment to the Department, may result in immediate termination of the contract.
- 4.1.7 The Department enters into this contract by the authority of its director. The Contractor enters into this contract individually or, if incorporated, pursuant to and by authority of its board of directors.
- 4.1.8 The Contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Department.

## **4.2 Amendment, Termination and Renewal**

- 4.2.1 The contract shall not bind, nor purport to bind, the Department for any commitment in excess of the original contract period.
- 4.2.2 The Contractor understands and agrees that authorization for the Department to contract for the services required herein is granted each fiscal year by the Office of Administration and that authorization for additional contract periods requires the annual renewal of the authorization.
- 4.2.3 The Contractor understands and agrees that funding for the contract must be appropriated by the Missouri General Assembly for each fiscal year included within the contract period. Therefore, the contract shall not be binding upon the Department for any period in which funds have not been appropriated, and the Department shall not be liable for any costs associated with termination caused by lack of appropriations.
- a. The Department reserves the right to terminate the contract, without penalty or termination costs, if such funds are not appropriated or available.
  - b. In the event funds are not appropriated or available for the contract, the Contractor shall not prohibit or limit the Department's right to pursue alternate contracts, as necessary, to conduct state governmental affairs.
  - c. The provisions of the above paragraphs shall apply to any amendment or the execution of any option to extend the contract.
- 4.2.4 Any change, whether by modification and/or supplementation, shall be accomplished by a formal contract amendment.
- 4.2.5 The Department shall have the right, at its sole option, to renew the contract. In the event the Department exercises its renewal option, all terms, conditions and provisions of the original contract and any subsequent amendments shall remain in effect and shall apply during the renewal period.
- 4.2.6 The Department shall have the right, at its sole option, to consolidate all or portions of related service contracts into a single contract.
- 4.2.7 The contract may be terminated by either party, by giving sixty (60) days advance written notice to the other party at its principal address. The termination shall be effective sixty (60) days from the date of notice or the date specified in the notice. The Department reserves the right to withdraw any or all of its clients before the end of the sixty (60) day period.

- 4.2.8 The Department may terminate the contract for breach of contract by providing the Contractor with a written notice of termination. The termination shall become effective on the date specified in the notice. At its sole discretion, the Department may give the Contractor an opportunity to cure the breach or to explain how the breach will be cured. Payments for services shall not be made beyond the date of termination.
- 4.2.9 Any written notice to the Contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, electronic mail, or hand-carried and presented to an authorized employee of the Contractor at the Contractor's address as listed in the contract.
- 4.2.10 In the event of termination all client records, documentation, data, reports, supplies, equipment and accomplishments prepared, furnished, acquired or developed by the Contractor as a direct requirement specified in the contract shall become the property of the Department.
- 4.2.11 Upon termination of the contract, the Contractor shall maintain, store, transfer, and provide for the authorized release of all client records developed by the Contractor as a direct requirement of this contract. The Contractor agrees that upon termination of the contract the Department shall have access to all client records pertaining to the performance of the contract and, as requested by the Department, the Contractor shall make available to the Department all client records and documents prepared or developed as a result of the contract.
- 4.2.12 Transition of Services: Upon expiration, termination, or cancellation of the contract, the Contractor shall assist the Department to ensure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the Department, if requested in writing. The Contractor shall provide and/or perform any or all of the following responsibilities:
- a. The Contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the Department and/or to the Department's designee within seven (7) days after receipt of the written request.
  - b. The Contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed thirty (30) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.
  - c. The Contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the Department, in order to ensure the completion of such service prior to the expiration of the contract.

### **4.3 Subcontracting**

- 4.3.1 The Contractor may subcontract for the services/products required herein with prior written approval from the Department.
- 4.3.2 The Contractor understands and agrees that utilization of a sub-contractor shall in no way relieve the Contractor of the responsibility for providing the services required herein.
- 4.3.3 Any subcontracts for the services/products described herein shall be in writing and shall include appropriate provisions and contractual obligations, including all requirements of the contract's General Contractual Requirements, to ensure the successful fulfillment of all contractual obligations.
- 4.3.4 Any subcontracts must ensure that the Department and the State of Missouri is indemnified, saved and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the Department and the Contractor.
- 4.3.5 The Contractor understands and agrees that the Contractor shall be solely responsible for all legal and financial responsibilities related to the execution of a subcontract.

#### **4.4 Conflict of Interest**

- 4.4.1 By signing this contract the Contractor certifies that the Contractor has no other contractual relationships which create any actual conflict of interest. The Contractor further agrees that during the term of the contract neither the Contractor nor any of its employees shall acquire any other contractual relationships which would create such a conflict.
- 4.4.2 In accordance with state and federal laws and regulations, state executive order or regulations, the Contractor certifies that it presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with their performance of the contracted services. The Contractor further agrees that no person having such interest shall be employed or conveyed an interest, directly or indirectly, in the contract.
- 4.4.3 In accordance with state law, no official or employee of the Department or public official of the State of Missouri who exercises any functions or responsibilities related to development, review, approval or oversight of the contract shall acquire any personal interest, directly or indirectly, in the contract or proposed contract. Therefore, the Contractor certifies that:
- a. No State of Missouri employee assisted the Contractor in obtaining this contract or will participate in the performance of this contract if such involvement constitutes a conflict of interest;
  - b. No State of Missouri employee shall be compensated under this contract for duties performed in the course of his/her state employment; and
  - c. Before any State of Missouri employee may be involved in the performance of this contract written approval shall be obtained from the director of the Department.
- 4.4.4 In the event the Contractor is a not-for-profit agency, Contractor board members must abstain from voting on any funding proposal in which they have administrative control or a monetary interest with the proposed grantee. Board members who have such an interest and participate in discussion prior to a vote must disclose such interest in a meeting of the board prior to such discussion.
- 4.4.5 The Contractor shall represents itself as an independent Contractor offering such services to the general public and shall not represent itself or its employees as employees of the Department or the State of Missouri.

#### **4.5 Business Compliance**

- 4.5.1 The Contractor must be in compliance with applicable laws regarding conducting business in the State of Missouri and certifies by signing this contract that it and any sub-contractors are presently, and will remain, in compliance with such laws.
- 4.5.2 The Contractor shall have all licenses and/or certifications current which are required by law, rule or regulation.
- 4.5.3 If required by state law, the Contractor shall be registered and in good standing with the State's Secretary of State and shall submit their State Certificate of Good Standing to the Department upon request.
- 4.5.4 The Contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.

#### **4.6 Personnel and Staffing**

- 4.6.1 The Contractor shall comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, any other federal and state laws, rules, regulations and executive orders to the extent that these may be applicable and further agrees to insert the foregoing provision in all subcontracts awarded.
- 4.6.2 The Contractor understands and agrees that by signing this document, they certify the following:
- a. The Contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.
  - b. If the Contractor is found to be in violation of this requirement or the applicable laws of the state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that



the Contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the Contractor from doing business with the state.

- c. The Contractor agrees to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.
- 4.6.3 The Contractor shall assume all legal and financial responsibility for taxes, FICA, employee benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters. The Contractor shall authorize and direct all custodians of records of their taxes, FICA and other employee benefits to release information to the Department upon request.
- 4.6.4 The Contractor agrees that this contract is predicated, in part, on the utilization of the specific resources, individuals and/or personnel qualifications as identified and/or described in the Contractor's proposal/bid, when applicable, or in Department required applications and/or financial reporting tools.
- a. The Contractor agrees that no personnel and/or individuals will be utilized in the performance of this contract who fail to meet specific qualifications required for services to be provided, as specified in the Department's service catalog for such service(s).
  - b. No substitution of provider qualifications shall be made by the Contractor without written approval of the Department.
  - c. The Contractor agrees that substitutions made pursuant to this paragraph shall be equal to or better than originally proposed, offered or identified.
- 4.6.5 The Contractor understands and acknowledges that Department-approved staffing ratios and/or patterns are essential for providing certain services. Therefore, as applicable, the Contractor shall maintain all Department-approved staff ratios, hours of services and/or patterns. The Contractor shall maintain time, salary or hourly pay rate data and personnel records, as specified by the Department, to document compliance with this requirement.
- a. The Contractor may request a written waiver from the Department to vary from required staff ratios, hours of services and/or patterns.
  - b. The Contractor understands and agrees that the Department may require a reduction of unit price(s) due to a Contractor requested reduction of staff/resources upon which the unit price is based.
  - c. The Contractor understands and agrees that the Department reserves the right to recover excess payments made to the Contractor when the Contractor has failed to maintain required staff ratios, hours of services and/or patterns. Such recovery of payments shall be retroactive to the date of occurrence.
- 4.6.6 The Contractor shall be responsible for assuring that all personnel including those of any sub-contractor(s), are appropriately qualified and licensed or certified, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this contract, and shall provide documentation of such licensure or certification upon request.

#### **4.7 Federal Funds Requirements**

- 4.7.1 The contract may involve the expenditure of federal funds. Therefore, the Contractor shall comply with the requirements listed in the following subparagraphs, as applicable.
- 4.7.2 If during the Contractor's fiscal year the Contractor expends \$750,000 or more in federal grant funds received from the Department, the Contractor shall have an annual audit conducted in accordance with 2 CFR 200.
- a. The audit shall be conducted by an individual or firm licensed by the Missouri State Board of Accountancy.
  - b. The Contractor shall submit a copy of the audit to the Department by the due date for filing the audit with the federal clearinghouse.

- c. Failure to comply with the audit requirements may result in reduction of available allocation of funds, reduction or suspension of payments to the Contractor or cancellation of this contract between the Department and the Contractor.

#### **4.8 Financial Requirements**

- 4.8.1 The availability of funding for this contract shall be determined solely by the Department and such determination shall be final and without recourse by the Contractor.
- 4.8.2 Moneys received from the Department under this contract shall not be used to supplant local funds or subsidize services provided to other agencies, organizations, or individuals.
- 4.8.3 Payments due under the terms of the contract shall be made by the Department upon receipt of a properly itemized invoice.
  - a. The Contractor shall submit their invoices in a timely fashion and no later than the time period specified in 33.120 RSMo, unless more restrictive requirements are established by state or federal law or regulation.
  - b. The Contractor shall invoice for services provided at the contracted unit price(s). Unit prices charged the Department shall be no greater than those charged to the general public for the same service.
  - c. The Contractor shall not invoice federal or state tax.
- 4.8.4 The Department reserves the right to: 1) audit all invoices, 2) reject any invoice for good cause, 3) make invoice corrections and/or changes with appropriate notification to the Contractor, and 4) deduct from an invoice any overpayment made by the Department.
  - a. All overpayments shall be collected in accordance with 630.460 RSMo. Overpayment is defined by 630.460 RSMo as any payment by the Department to a vendor providing care, treatment, habilitation or rehabilitation services to clients under contract with the Department which is:
    - 1. In excess of the contracted rate less payments by the client, or on his behalf, as required to be made by the Standard Means Test, contained in 9 CSR 10-31.011;
    - 2. In payment of services not provided;
    - 3. In payment for any service not authorized in the contract with the Department; or
    - 4. In payment for services provided contrary to the provisions of the contract with the Department.
- 4.8.5 In accordance with 9 CSR 10-31.011, the Contractor shall apply to the costs incurred for providing services to the client the benefits received or available on behalf of or to the client from private and public health insurance, health services corporation and health maintenance organization plans, policies and contracts including individual, company, fraternal, group, Medicare, Medicaid and similar plans to the extent and limits of the coverage for the recipient.
  - a. The Department reserves the right to deduct from the Contractor's invoice, if not deducted by the Contractor, all amounts to be collected by the Contractor from the client or other payment sources.
- 4.8.6 The Contractor shall not make any collection for Title XIX Medicaid-covered services from the recipient, his or her spouse, parent, guardian, relative or anyone else receiving public assistance, and if any payment is received or assured from any other source on the recipient's account, the Contractor shall deduct that amount from the claim filed with Title XIX Medicaid.

#### **4.9 Standard Means Test**

- 4.9.1 For those services paid by the Department, the Contractor shall apply the Department's Standard Means Test in accordance with 9 CSR 10-31.011, when not applied by the Department. Nothing in this contract shall deny the right of a client or his responsible person to appeal to the Department for re-determination of the amounts payable by them to the Contractor under 9 CSR 10-31.011.
- 4.9.2 The Contractor shall charge and become responsible for the collection of client payments as determined by the Standard Means Test, in accordance with 9 CSR 10-31.011. Amounts charged to clients, whether or not collected, shall be shown as a credit on the invoice.

- 4.9.3 The Contractor shall not impose or increase fees for those services paid by the Department without the written consent of the Department, except as permitted by the Standard Means Test.
- a. Nothing in this contract shall be construed to prohibit the Contractor from collecting fees for services not paid by the Department that the Contractor would otherwise be entitled to collect.
- 4.9.4 Nothing in this contract shall impair the statutory rights of the Department to charge a Department client, a client's estate or the person(s) obligated to pay for services rendered to the client for expenditures made by the Department for the client.

#### **4.10 Insurance**

- 4.10.1 The Contractor understands and agrees that the Department and the State of Missouri cannot save and hold harmless and/or indemnify the Contractor or employees against any liability incurred or arising as a result of any activity of the Contractor or any activity of the Contractor's employees related to the Contractor's performance under the contract. Therefore, the Contractor shall acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its clients, its employees and the general public against any loss, damage and/or expense related to his/her performance under the contract.
- 4.10.2 The Contractor shall be responsible for all injury or damage as a result of the Contractor's negligence, or any future negligent act, involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition to the liability imposed upon the Contractor on account of personal injury, bodily injury (including death), or property damage suffered as a result of the Contractor's negligence, the Contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assigns, from every expense, liability, or payment arising out of such negligent act. The Contractor also agrees to hold the State of Missouri, including its agencies, employees, and assigns, harmless for any negligent act or omission committed by any sub-contractor or other person employed by or under the supervision of the Contractor under the terms of the contract.
- 4.10.3 The Contractor shall maintain adequate automobile liability insurance for the operation of any motor vehicle used to provide any form of transportation service related to the services of this contract.
- 4.10.4 If the contract involves the performance of medical services of any type, the Contractor shall maintain adequate liability insurance to cover all medical services rendered.
- 4.10.5 Proof of the insurance coverage shall include, but not be limited to, effective dates of coverage, limits of liability, insurers' names, policy numbers, company, etc. Proof of self-insurance coverage or another alternative risk financing mechanism may be utilized provided that such coverage is verifiable and irrevocably reliable. Proof of insurance coverage shall be submitted to the Department as requested.

#### **4.11 Human Rights**

- 4.11.1 The Contractor shall establish a system satisfactory to the Department through which recipients of services under this contract may present grievances. The Contractor shall maintain at the facility a file of all Department client grievances of an alleged violation of rights and how the grievance has been or is proposed to be resolved. The person in charge shall cooperate fully with any subsequent Department investigation of the grievance.
- 4.11.2 If this contract is federally funded, the Contractor shall abide by the provisions of the Pro-Children Act of 1994 (PL 103-227) regarding environmental tobacco smoke, which is incorporated herein as if fully set out.
- 4.11.3 The Contractor shall comply with all applicable provisions of the Civil Rights Act (45 CFR 80) and the Age Discrimination in Employment Act of 1967 (45 CFR 90).
- 4.11.4 In compliance with Governor's Executive Order #87-6 (Art. XIII); Federal Executive Order 11246 as amended; Section 503 of the Rehabilitation Act (45 CFR 84) as amended; Vietnam-Era Veterans Readjustment Assistance Act as amended, 38 U.S.C. 4212 (formerly 2012); and the Americans with Disabilities Act of 1990; Contractors that employ fifty (50) or more persons shall comply with the above state and federal regulations which require non-discrimination in employment and delivery of services.
- a. In addition to the above, the Contractor shall make the following human rights assurances:

1. Not to discriminate against recipients of services on the basis of race, color, religion, national origin, sex, physical ability, veteran status or age.
2. Not to discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex or otherwise qualified status of physical ability.
3. Not to discriminate against any applicant for employment or employee on the basis of age, where such applicant or employee is between the ages of forty (40) and seventy (70) and where such Contractor employs at least twenty (20) persons.
4. Not to discriminate against any applicant for employment or employee on the basis of that person's status as a disabled or Vietnam-era veteran, if the compensation payable to the Contractor or sub-contractor is at least \$10,000 within a fiscal year.
5. To develop, implement and maintain an affirmative action program if at least fifty (50) persons in the aggregate are employed. For the purpose of this contract, an "affirmative action program" means positive action to influence all employment practices (including, but not limited to, recruiting, hiring, promoting and training) in providing equal employment opportunity regardless of race, color, sex, origin, religion, age, physical ability and Vietnam-era veteran status. Such an Affirmative Action Program shall include:
  - aa. A written policy statement committing the total organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
  - bb. The identification of a person designated to handle affirmative action;
  - cc. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure and standards applicable to layoff, recall, discharge, demotion and discipline;
  - dd. The exclusion of discrimination from all collective bargaining agreements; and
  - ee. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.
- b. If the Contractor uses any funds of this contract in a subcontract, then the Contractor shall require such a sub-contractor to comply with the applicable human rights clauses above.
- c. The Department shall have the right to enforce all applicable clauses by appropriate procedures, including but not limited to, requests, reports, site visits and inspection of relevant documentation of the Contractor.

4.11.5 The Contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (Public Law 101-336) (28 CFR 35), which prohibits discrimination against people with disabilities in employment, services, transportation, public accommodations, communications and activities of state and local government. The Contractor's failure to comply with this act may result in termination of the contract. The Contractor shall notify the Department immediately of any allegations, claims, disputes, or challenges made against the Contractor concerning this act.

4.11.6 Disclosure of information, by either party to the contract, concerning a client for any purpose not directly related to the performance of this contract is prohibited except as specified by applicable state and federal laws and regulations.

## **4.12 Recordkeeping and Reporting Requirements**

4.12.1 The Contractor shall maintain auditable records for all activities performed under this contract. Financial records shall conform to Generally Accepted Accounting Principles (GAAP). Such records shall reflect, at a minimum, the specific number and type of service units provided, the number and type of clients served, client progress and other relevant records. The Contractor shall submit itemized reports, records and information at the request of the Department.

4.12.2 The Contractor shall allow the Department or its authorized representative to inspect and examine the Contractor's premises and/or records which relate to the performance of the contract at any time during the period of the contract and within the period specified herein for the Contractor's retention of records.

- 4.12.3 The Contractor shall provide the Department with access to its clients and client records without limitation. If access is denied or limited, the Department reserves the right to terminate payment from the day access is denied or limited.
- 4.12.4 The Contractor shall retain all records pertaining to the contract for six (6) years after the close of the contract year unless audit questions have arisen within the six year limitation and have not been resolved. All records shall be retained until all audit questions have been resolved.
- 4.12.5 The Contractor shall provide written notification to the Department when there is any change in the Contractor's licensure or certification/accreditation status, official name, address, Executive Director, or change in ownership and/or control of the Contractor's organization.
- 4.12.6 Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor shall notify the Department immediately. Upon learning of any such actions the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

#### **4.13 Notification Requirements**

- 4.13.1 The Contractor shall immediately notify the Department, in accordance with guidelines established by the Department, when there is a death of a client.
- 4.13.2 The Contractor shall notify the Department in accordance with 9 CSR 10-5.200 when there are allegations of physical abuse, sexual abuse, verbal abuse or neglect of a client or misuse of client funds/property.
- 4.13.3 Under circumstances, as referenced in 632.300 RSMo, in which a client's conduct is jeopardizing the safety of the client or others in the community, the Contractor shall immediately notify the authorizing Department facility. If an immediate response is needed to ensure the health and/or safety of the client or others, the Contractor shall also notify local law enforcement officials.
- 4.13.4 In the event the Contractor receives notice of a Class I license violation from the Department of Health and Human Services or the Department of Health and Senior Services or a notice under certification that a condition of jeopardy exists, the Contractor shall immediately notify the Department.
- a. Notification to the Department may be verbal and shall be followed by written notification mailed within forty-eight (48) hours.
  - b. If applicable, the Contractor shall submit to the Department a copy of any plan of correction for Class I deficiencies which has been approved by the Department of Health and Senior Services, the Department, Health Care Financing Administration or other license certification or accreditation authority.

#### **4.14 Miscellaneous**

- 4.14.1 Unless otherwise specified, the Contractor shall be responsible for furnishing all material, labor, facilities, equipment and supplies necessary to perform the services required.
- 4.14.2 The Department may require the attendance of the Contractor's personnel at training activities and may require the cooperation of the Contractor's personnel where the Department provides technical assistance.
- 4.14.3 The Department reserves the right to place a monitor with the Contractor, given any situation described in Section 630.763 RSMo, or when the Department determines that the health, safety or welfare of the clients cannot be adequately assured.
- 4.14.4 The Contractor shall fully cooperate with all investigations conducted by the Department, or its agents, which relate, directly or indirectly, with the performance of this contract.
- 4.14.5 The Department endorses a drug free environment and the absence of substance abuse. The Contractor shall support and enforce these philosophies in their performance of the contract.
- 4.14.6 The Contractor agrees to maintain appropriate documentation that it has appropriate systems and controls in place to ensure that any and all information software systems used in relationship to the contractual responsibilities with the Department have been acquired, operated and maintained consistently with U.S.

copyright law or applicable licensing restrictions. The Contractor agrees to make documentation of such compliance and any such license immediately available upon request by the Department.

- 4.14.7 The Contractor shall agree and understand that all discussions with the Contractor and all information gained by the Contractor as a result of the Contractor's performance under the contract shall be confidential and that no reports, documentation or material prepared as required by the contract shall be released to the public without the prior written consent of the Department.

## **5. INVOICING AND PAYMENTS TERMS**

### **5.1 Invoicing Terms**

- 5.1.1 The Contractor shall submit invoices to the department by the 15<sup>th</sup> day of each month to the address listed below:

Department of Mental Health  
Division of Behavioral Health  
Attn: Jeanette Simmons  
PO Box 687  
Jefferson City, MO 65102-0687  
E-Mail: [DBHFiscal@dmh.mo.gov](mailto:DBHFiscal@dmh.mo.gov)

- 5.1.2 The Contractor must use a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State of Missouri's EFT addendum record to enable the Contractor to properly apply the state agency's payment to the invoice submitted. The Contractor may obtain detailed information for payments issued for the past twenty- four (24) months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at:

<https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>.

- 5.1.3 Final invoices are due by no later than thirty (30) calendar days of the expiration of the contract. The facility shall have no obligation to pay any invoice submitted after the due date.

### **5.2 Payments to the Contractor**

- 5.2.1 The Department shall submit contract payments to the Contractor at the remittance address listed in the Contractor's MissouriBUYS vendor registration. However, the Contractor shall understand and agree the Department reserves the right to make contract payments to the Contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the Contractor must verify and update, if applicable, their vendor registration with their current remittance address and ACH-EFT payment information at <https://MissouriBUYS.mo.gov>.

- a. The Contractor may obtain detailed information for payments issued for the past 24 months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at:

<https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>

- 5.2.2 The Contractor shall be paid the firm, fixed price of \$90 per IST defendant per day, with a maximum of ten (10) IST defendants per day for a daily maximum of \$900 per day for services provided pursuant to this contract.

- 5.2.3 Other than the payments and reimbursements specified above, no other payments or reimbursements shall be made to the Contractor.

## Attachment A (Business Associate Agreement)

(rev 06.07.13)

1. Health Insurance Portability and Accountability Act of 1996, as amended - The Department of Mental Health and the Contractor are both subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein. The Contractor constitutes a "Business Associate" of the Department. Therefore, the term, "Contractor" as used in this section shall mean "Business Associate."
2. The Contractor agrees that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR Parts 160 and 164 and 42 U.S.C. §§ 17921 *et. seq.* including, but not limited to the following:
  - a. "Access", "administrative safeguards", "confidentiality", "covered entity", "data aggregation", "designated record set", "disclosure", "hybrid entity", "information system", "physical safeguards", "required by law", "technical safeguards", "use" and "workforce" shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.
  - b. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. § 17921. This definition shall not apply to the term "breach of contract" as used within the contract.
  - c. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Contractor.
  - d. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Department.
  - e. "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified below.
  - f. "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.
  - g. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - h. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
  - i. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  - j. "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:
    - 1) Except as provided in paragraph (2) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
    - 2) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity (Department) in its role as employer.
  - k. "Security Incident" shall be defined as set forth in the "Obligations of the Contractor" section of the Business Associate Provisions.
  - l. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.
  - m. "Unsecured Protected Health Information" shall mean Protected Health Information that is not secured through the use of a technology or methodology determined in accordance with 42 U.S.C. § 17932 or as otherwise specified by the secretary of Health and Human Services.
3. The Contractor agrees and understands that wherever in this document the term Protected Health Information is used, it shall also be deemed to include Electronic Protected Health Information.
4. The Contractor must appropriately safeguard Protected Health Information which the Contractor receives from or creates or receives on behalf of the Department. To provide reasonable assurance of appropriate safeguards, the Contractor shall comply with the business associate provisions stated herein, as well as the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) and all regulations promulgated pursuant to authority granted therein.

5. The Department and the Contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, Enforcement Rule, and other rules as later promulgated (hereinafter referenced as the regulations promulgated thereunder). Any ambiguity in the contract shall be interpreted to permit compliance with the HIPAA Rules.
- 6. Permitted Uses and Disclosures of Protected Health Information by the Contractor**
  - 6.1 The Contractor may not use or disclose Protected Health Information in any manner that would violate Subpart E of 45 CFR Part 164 if done by the Department, except for the specific uses and disclosures in the contract.
  - 6.2 The Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Department as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.
  - 6.3 The Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the Department by no later than ten (10) calendar days after the Contractor becomes aware of the disclosure of the Protected Health Information.
  - 6.4 If required to properly perform the contract and subject to the terms of the contract, the Contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the Contractor's business.
  - 6.5 If the disclosure is required by law, the Contractor may disclose Protected Health Information to carry out the legal responsibilities of the Contractor.
  - 6.6 If applicable, the Contractor may use Protected Health Information to provide Data Aggregation services to the Department as permitted by 45 CFR 164.504(e)(2)(i)(B).
  - 6.7 The Contractor may not use Protected Health Information to de-identify or re-identify the information in accordance with 45 CFR 164.514(a)-(c) without specific written permission from the Department to do so.
  - 6.8 The Contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the Department's minimum necessary policies and procedures.
- 7. Obligations and Activities of the Contractor**
  - 7.1 The Contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law, and shall comply with the minimum necessary disclosure requirements set forth in 45 CFR § 164.502(b).
  - 7.2 The Contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards shall include, but not be limited to:
    - a. Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;
    - b. Policies and procedures implemented by the Contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;
    - c. Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;
    - d. Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and
    - e. Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.
  - 7.3 With respect to Electronic Protected Health Information, the Contractor shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Contractor creates, receives, maintains or transmits on behalf of the Department and comply with Subpart C of 45 CFR Part 164, to prevent use or disclosure of Protected Health Information other than as provided for by the contract.
  - 7.4 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), the Contractor shall require that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the Contractor agrees to the same restrictions, conditions, and requirements that apply to the Contractor with respect to such information.
  - 7.5 By no later than ten (10) calendar days after receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the Contractor shall make the Contractor's internal practices, books, and records, including policies and



procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by, or received by the Contractor on behalf of the Department available to the Department and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules and the contract.

- 7.6 The Contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the Department to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 42 USCA §17932 and 45 CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the Department, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, the Contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the Department. If requested by the Department or the individual, the Contractor shall provide an accounting of disclosures directly to the individual. The Contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the Department upon request.
- 7.7 In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, the Contractor shall, within five (5) calendar days following a Department request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the Department, provide the Department access to the Protected Health Information in an individual's designated record set. However, if requested by the Department, the Contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.
- 7.8 At the direction of the Department, the Contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.
- 7.9 The Contractor shall report to the Department's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the Contractor becomes aware of such incident, the Contractor shall provide the Department's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.
- 7.10 The Contractor shall report to the Department's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the Contractor becomes aware of any such use or disclosure, the Contractor shall provide the Department's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures.
- 7.11 The Contractor shall report to the Department's Security Officer any breach immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. By no later than five (5) days after the Contractor becomes aware of such incident, the Contractor shall provide the Department's Security Officer with a description of the breach, the information compromised by the breach, and any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan for approval that describes plans for preventing any such future incidents.
- 7.12 The Contractor's reports required in the preceding paragraphs shall include the following information regarding the security incident, improper disclosure/use, or breach, (hereinafter "incident"):
- a. The name, address, and telephone number of each individual whose information was involved if such information is maintained by the Contractor;
  - b. The electronic address of any individual who has specified a preference of contact by electronic mail;
  - c. A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;
  - d. A description of the types of Protected Health Information involved in the incident (such as full name, Social Security Number, date of birth, home address, account number, or disability code) and whether the incident involved Unsecured Protected Health Information; and
- The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.

- 7.13 Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the Contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR Part 164.
- 7.14 Contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.
- 7.15 If the Contractor becomes aware of a pattern of activity or practice of the Department that constitutes a material breach of contract regarding the Department's obligations under the Business Associate Provisions of the contract, the Contractor shall notify the Department's Security Officer of the activity or practice and work with the Department to correct the breach of contract.
- 7.16 The Contractor shall indemnify the Department from any liability resulting from any violation of the Privacy Rule or Security Rule or Breach arising from the conduct or omission of the Contractor or its employee(s), agent(s) or subcontractor(s). The Contractor shall reimburse the Department for any and all actual and direct costs and/or losses, including those incurred under the civil penalties implemented by legal requirements, including but not limited to HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act, and including reasonable attorney's fees, which may be imposed upon the Department under legal requirements, including but not limited to HIPAA's Administrative Simplification Rules, arising from or in connection with the Contractor's negligent or wrongful actions or inactions or violations of this Agreement.
- 7.17 Notwithstanding the language in this Agreement set forth above in the Section 7.16, the parties recognize that certain Business Associates and/or Contractors may be entities that are sovereign political subdivisions of the State of Missouri – including but not limited to a department, board or other governmental unit of a city, county, township, etc. In that instance, the Business Associate or Contractor, by entering into this agreement, is not thereby waiving or limiting the rights or defenses it may have with respect to sovereign or governmental immunity, official immunity or any other legal protections applicable under federal or state law, which are afforded to that Business Associate or Contractor and its employees by virtue of the entity's status as a political subdivision of the State of Missouri.

## **8. Obligations of the Department**

- 8.1 The Department shall notify the Contractor of limitation(s) that may affect the Contractor's use or disclosure of Protected Health Information, by providing the Contractor with the Department's notice of privacy practices in accordance with 45 CFR 164.520.
- 8.2 The Department shall notify the Contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.
- 8.3 The Department shall notify the Contractor of any restriction to the use or disclosure of Protected Health Information that the Department has agreed to in accordance with 45 CFR 164.522.
- 8.4 The Department shall not request the Contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.

## **9. Expiration/Termination/Cancellation**

- 9.1 Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the Contractor shall, at the discretion of the Department, either return to the Department or destroy all Protected Health Information received by the Contractor from the Department, or created or received by the Contractor on behalf of the Department, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractor or agents of the Contractor.
- 9.2 In the event the Department determines that returning or destroying the Protected Health Information is not feasible, the Contractor shall extend the protections of the contract to the Protected Health Information for as long as the Contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the Contractor must notify the Department and obtain instructions from the Department for either the return or destruction of the Protected Health Information.

## **10. Breach of Contract**

- 10.1 In the event the Contractor is in breach of contract with regard to the business associate provisions included herein, the Contractor agrees that in addition to the requirements of the contract related to cancellation of contract, if the Department determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the Department shall report the breach of contract to the Secretary of the Department of Health and Human Services.



# TERMS AND CONDITIONS

## MISSOURI DEPARTMENT OF MENTAL HEALTH

### 1. Terminology/Definitions

Whenever the following words and expressions appear in a document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Amendment** means a written, official modification to a contract.
- b. **Attachment** applies to all forms which are included to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- c. **Buyer** means the procurement staff member of the Department of Mental Health.
- d. **Contact Person** as referenced herein is usually the Buyer.
- e. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- f. **Contractor** means a person or organization who enters into a contract.
- g. **Department** means the Missouri Department of Mental Health.
- h. **Exhibit** applies to forms which are included with a contract to be completed and submitted with the contract.
- i. **May** means that a certain feature, component, or action is permissible, but not required.
- j. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- k. **Pricing Page(s)** applies to the form(s) on which the Contractor must state the price(s) applicable for the equipment, supplies, and/or services required in the contract. The pricing pages must be completed and submitted by the Contractor with the contract.
- l. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the procurement operations of the Department.
- m. **Shall** has the same meaning as the word **must**.
- n. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

### 2. Applicable Laws and Regulations

- 2.1 The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.

### 3. Contract/Purchase Order

- 3.1 A binding contract shall consist of: the contract and any amendments thereto, All Exhibits and Attachments included in the contract and shall be incorporated into the contract.
- 3.2 A notice of award issued by the Department does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services the Contractor must receive a properly authorized purchase order or other form of authorization given to the Contractor at the discretion of the Department.

### 4. Invoicing and Payment

- 4.1 The Department does not pay state or federal taxes unless otherwise required under law or regulation.
- 4.2 The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- 4.3 Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the contract.

- 4.4 The Department assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the Contractor's expense.
- 4.5 All invoices for equipment, supplies, and/or services purchased by the Department shall be subject to late payment charges as provided in Section 34.055 RSMo.
- 4.6 The Department reserves the right to purchase goods and services using the state purchasing card.
7. **Delivery:** Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.
- 8. Inspection and Acceptance**
- 8.1 No equipment, supplies, and/or services received by the Department pursuant to a contract shall be deemed accepted until the Department has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- 8.2 All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- 8.3 The Department reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- 8.4 The Department's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the Department may have.
- 9. Warranty**
- 9.1 The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the Department, (2) be fit and sufficient for the purpose expressed in the contract, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- 10.2 Such warranty shall survive delivery and shall not be deemed waived either by reason of the Department's acceptance of or payment for said equipment, supplies, and/or services.
- 11. Conflict of Interest**
- 11.1 Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- 11.2 The Contractor hereby covenants that at the time of the submission of the bid the Contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The Contractor further agrees that during the term of the contract neither the Contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.
- 12. Remedies and Rights**
- 12.1 No provision in the contract shall be construed, expressly or implied, as a waiver by the Department of any existing or future right and/or remedy available by law in the event of any claim by the Department of the Contractor's default or breach of contract.
- 13. Cancellation of Contract**
- 13.1 In the event of material breach of the contractual obligations by the Contractor, the Department may cancel the contract. At its sole discretion, the Department may give the Contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the Contractor must provide the Department within 10 working days from notification a written plan detailing how the Contractor intends to cure the breach.
- 13.2 If the Contractor fails to cure the breach or if circumstances demand immediate action, the Department will issue a notice of cancellation terminating the contract immediately.
- 13.3 If the Department cancels the contract for breach, the Department reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms

and in such manner as the Department deems appropriate and charge the Contractor for any additional costs incurred thereby.

**14. Bankruptcy or Insolvency**

14.1 Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify the Department immediately.

14.2 Upon learning of any such actions, the Department reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

**15. Invention, Patents and Copyrights:** The Contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

**16. Non-Discrimination and Affirmative Action**

16.1 In connection with the furnishing of equipment, supplies, and/or services under the contract, the Contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the Contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

16.2 If discrimination by a Contractor is found to exist, the Department shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the Department until corrective action by the Contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

**17. Americans with Disabilities Act:** In connection with the furnishing of equipment, supplies, and/or services under the contract, the Contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

**18. Filing and Payment of Taxes:** The Department cannot contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

**19. Titles:** Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

*(Rev 3/25/22)*

**EXHIBIT #1**

**BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION,  
AND AFFIDAVIT OF WORK AUTHORIZATION**

**BUSINESS ENTITY CERTIFICATION**

**The Vendor MUST certify their current business status by completing either Box A or Box B or Box C on this Exhibit.**

**BOX A:** To be completed by a non-business entity as defined below.

**BOX B:** To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at <https://www.e-verify.gov/>.

**BOX C:** To be completed by a business entity who has current work authorization documentation on file with a Missouri Department including Office of Administration, Division of Purchasing.

**Business entity**, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, Contractors, and subcontractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities, out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

**BOX A – CURRENTLY NOT A BUSINESS ENTITY**

I certify that \_\_\_\_\_ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- I am a self-employed individual with no employees; **OR**
- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if \_\_\_\_\_ (Company/Individual Name) is awarded a contract for the services requested herein under \_\_\_\_\_ (IFB Number) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, \_\_\_\_\_ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department with all documentation required in Box B of this exhibit.

\_\_\_\_\_  
Authorized Representative's Name (Please Print)

\_\_\_\_\_  
*Authorized Representative's Signature*

\_\_\_\_\_  
Company Name (if applicable)

\_\_\_\_\_  
Date

**EXHIBIT #1, continued**

**(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)**

**BOX B – CURRENT BUSINESS ENTITY STATUS**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530.

\_\_\_\_\_  
Authorized Business Entity Representative's  
Name (Please Print)

\_\_\_\_\_  
*Authorized Business Entity  
Representative's Signature*

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

As a business entity, the Vendor **must** perform/provide each of the following. The Vendor should check each to verify completion/submission of all of the following:

- Enroll and participate in the E-Verify federal work authorization program (Website: <https://www.e-verify.gov/>; Phone: 888-464-4218; Email: [e-verify@dhs.gov](mailto:e-verify@dhs.gov)) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein;

AND

- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the Vendor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the Vendor's name and the MOU signature page completed and signed, at minimum, by the Vendor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the Vendor's name and company ID, then no additional pages of the MOU **must** be submitted;

AND

- Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

**EXHIBIT #1, continued**

**AFFIDAVIT OF WORK AUTHORIZATION**

The Vendor who meets the section 285.525, RSMo, definition of a business entity **must** complete and return the following Affidavit of Work Authorization.

Comes now \_\_\_\_\_ (Name of Business Entity Authorized Representative) as \_\_\_\_\_ (Position/Title) first being duly sworn on my oath, affirm \_\_\_\_\_ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that \_\_\_\_\_ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

***In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)***

|                                              |                            |
|----------------------------------------------|----------------------------|
| _____                                        | _____                      |
| <i>Authorized Representative's Signature</i> | Printed Name               |
| _____                                        | _____                      |
| Title                                        | Date                       |
| _____                                        | _____                      |
| E-Mail Address                               | E-Verify Company ID Number |

Subscribed and sworn to before me this \_\_\_\_\_ of \_\_\_\_\_.  
(DAY) (MONTH, YEAR)

I am commissioned as a notary public within the County of \_\_\_\_\_,  
(NAME OF COUNTY)

State of \_\_\_\_\_, and my commission expires on \_\_\_\_\_.  
(NAME OF STATE) (DATE)

|                            |       |
|----------------------------|-------|
| _____                      | _____ |
| <i>Signature of Notary</i> | Date  |



**EXHIBIT #1, continued**

**(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)**

**BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS**

I certify that \_\_\_\_\_ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri Department that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the Vendor’s name and the MOU signature page completed and signed by the Vendor and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (**must** be completed, signed, and notarized within the past twelve months).

Name of **Missouri Department** to Which Previous E-Verify Documentation Submitted:  
\_\_\_\_\_.

**Date** of Previous E-Verify Documentation Submission: \_\_\_\_\_.

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted:  
\_\_\_\_\_ (if known)

\_\_\_\_\_  
Authorized Business Entity Representative’s Name  
(Please Print)

\_\_\_\_\_  
*Authorized Business Entity  
Representative’s Signature*

\_\_\_\_\_  
Business Entity Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
E-Verify MOU Company ID Number

**FOR STATE OF MISSOURI USE ONLY**

Documentation Verification Completed By:

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Date

**EXHIBIT #2**  
**BUSINESS COMPLIANCE**  
**FEDERAL FUNDING UNIQUE IDENTITY ID**

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**Federal Debarment:** The Vendor **must** not be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the contract by any Federal department or agency pursuant to 2 CFR Part 180, or any other applicable law. The Vendor should provide its Unique Identity ID number on the table below:

**Unique Entity ID:** The Unique Entity ID is the official identifier for doing business with the US Government. Vendors should register at <https://sam.gov/content/home> to be assigned a Unique Entity ID. In the table below, identify the Unique Identity ID number and, if applicable, the Parent Organization's Unique Identity ID Number. The Parent Organization's Unique Identity ID number is typically used by large organizations with multiple facilities in several locations. The Parent Organization's number is the number assigned to the headquarters for the operation.

|                                    |                                                        |
|------------------------------------|--------------------------------------------------------|
| <b>Vendor Name:</b>                | <b>Vendor's Unique Identity ID Number:</b>             |
| <b>Parent Organization's Name:</b> | <b>Parent Organizations Unique Identity ID Number:</b> |

### **EXHIBIT #3**

#### **ANTI-DISCRIMINATION AGAINST ISRAEL ACT CERTIFICATION**

**Statutory Requirement:** Section 34.600, RSMo, precludes entering into a contract with a company to acquire products and/or services “unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.”

**Exceptions:** The statute provides two exceptions for this certification: 1) “contracts with a total potential value of less than one hundred thousand dollars” or 2) “Contractors with fewer than ten employees.” Therefore the following certification is required prior to any contract award.

Section 34.600, RSMo, defines the following terms:

**Company** - any for-profit or not-for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.

**Boycott Israel and Boycott of the State of Israel** - engaging in refusals to deal, terminating business activities, or other actions to discriminate against, inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, that are all intended to support a boycott of the State of Israel. A company’s statement that it is participating in boycotts of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel shall be considered to be conclusive evidence that a company is participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel; provided, however that a company that has made no such statement may still be considered to be participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel if other factors warrant such a conclusion.

**Certification:** The Vendor must therefore certify their current status by completing either Box A, Box B, or Box C on the next page of this Exhibit.

**BOX A:** To be completed by any Vendor that does not meet the definition of “company” above, hereinafter referred to as “Non-Company.”

**BOX B:** To be completed by a Vendor that meets the definition of “Company” but has less than ten employees.

**BOX C:** To be completed by a Vendor that meets the definition of “Company” and has ten or more employees.

**EXHIBIT #3, continued**

**BOX A - NON-COMPANY ENTITY**

I certify that \_\_\_\_\_ (Entity Name) currently **DOES NOT MEET** the definition of a company as defined in section 34.600, RSMo, but that if awarded a contract and the entity's business status changes during the life of the contract to become a "company" as defined in section 34.600, RSMo, and the entity has ten or more employees, then, prior to the delivery of any services and/or supplies as a company, the entity agrees to comply with, complete, and return Box C to the Department at that time.

\_\_\_\_\_  
Authorized Representative's Name (Please Print)

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Entity Name

\_\_\_\_\_  
Date

**BOX B - COMPANY ENTITY WITH LESS THAN TEN EMPLOYEES**

I certify that \_\_\_\_\_ (Company Name) **MEETS** the definition of a company as defined in section 34.600, RSMo, and currently has less than ten employees but that if awarded a contract and if the company increases the number of employees to ten or more during the life of the contract, then said company shall comply with, complete, and return Box C to the Department at that time.

\_\_\_\_\_  
Authorized Representative's Name (Please Print)

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**BOX C - COMPANY ENTITY WITH TEN OR MORE EMPLOYEES**

I certify that \_\_\_\_\_ (Company Name) **MEETS** the definition of a company as defined in section 34.600, RSMo, has ten or more employees, and is not currently engaged in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel as defined in section 34.600, RSMo. I further certify that if the company is awarded a contract for the services and/or supplies requested herein said company shall not engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel as defined in section 34.600, RSMo, for the duration of the contract.

\_\_\_\_\_  
Authorized Representative's Name (Please Print)

\_\_\_\_\_  
Authorized Representative's Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** awarding a forty-four-month contract, with two twelve-month options to extend, for the furnishing of auction services for use by the Purchasing Department to Purple Wave Auction of Manhattan, KS under the terms and conditions of State of Kansas Contract No. 52954, an existing government contract.

**RESOLUTION NO. 21597**, April 8, 2024

**INTRODUCED BY** Megan L. Marshall, County Legislator

WHEREAS, the Purchasing Department requires a contract for auction services for the disposal of surplus equipment and personal property; and,

WHEREAS, the disposal by auction of property will generate income and the auction services come at no cost to the County; and,

WHEREAS, the contract term is intended to coincide with the contract term for State of Kansas Contract 52954; and,

WHEREAS, pursuant to section 1030.4, Jackson County Code, the Director of Finance and Purchasing recommends the approval of a forty-four month contract, with two twelve-month options to extend, for the furnishing of auction services for use by the Purchasing Department to Purple Wave, Inc (dba Purple Wave Auction Services) of Manhattan, KS under the terms and conditions of State of Kansas Contract 52954, an existing government contract; and,

WHEREAS, the award of this contract comes at no cost to the county, as all commissions and fees available to the vendor under the contract are paid by the purchasers of auction items; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that award be made under the existing government contract as recommended by the Director of Finance and Purchasing and that the Director be, and is hereby, authorized to execute for the County any documents necessary for the accomplishment of the award.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

*Bryan Covinsky*

Bryan Covinsky (Apr 4, 2024 09:49 CDT)

County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 21597 of April 8, 2024, was duly passed on \_\_\_\_\_, 2024 by the Jackson County Legislature. The votes thereon were as follows:

Yeas \_\_\_\_\_

Nays \_\_\_\_\_

Abstaining \_\_\_\_\_

Absent \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Jo Spino, Clerk of Legislature



# Jackson County, Missouri

## Request for Legislative Action

**REQUESTED MEETING DATE:** \_\_\_\_\_ **SPONSOR:** Megan L. Marshall

*To be completed by the County Counselor's Office:*

**NUMBER:** 21597 **ASSIGNED MEETING DATE:** 04/08/2024

**STAFF CONTACT:** John Konon **PHONE:** 816-881-3292

**EMAIL:** jkonon@jacksongov.org

**DEPARTMENT:** Finance

**TITLE:** Buyer

**SUMMARY:**

Awarding a Forty-Four (44) Month Contract with Two (2) Twelve (12) month options to extend for the furnishing of Auction Services for use by the Purchasing Department to Purple Wave, Inc. dba Purple Wave Auction of Manhattan, KS under the terms & conditions of the State of Kansas Contract 52954, and existing government contract. The Purchasing Department requires a contract for the furnishing of Auction Services for the disposal of surplus equipment and personal property. Services will be provided by Purple Wave Auction at no cost to the County and the County will generate income from the use of this contract. The Contract ID-52954 State of KS Auction Services Full Contract Award and the Contract ID-52954 State of KS Auction Services Contract Award Pages are attached.

Pursuant to Section 1030.4 of the Jackson County Code, the Director of Finance and Purchasing recommends the award for a Forty-Four (44) Month Contract with Two (2) Twelve (12) month option to extend for the furnishing of Auction Services for use by the Purchasing Department to Purple Wave, Inc. dba Purple Wave Auction of Manhattan, KS under the terms & conditions of the State of Kansas Contract 52954, and existing government contract.

The Jackson County Compliance portal was checked and the recommended vendor has a current certificate on file showing 2024/12/31 expiration date.

**FINANCIAL IMPACT:** NO

YES

Amount

Fund

Department

Line-Item Detail

**ACTION NEEDED:** AWARD A CONTRACT

**ATTACHMENT(S):**



## CONTRACT AWARD

**Date of Award:** November 01, 2022  
**Contract ID:** 0000000000000000000052954  
**Event ID:** EVT0008710  
**Replace Contract:** 42014

**Procurement Officer:** Neal Farron  
**Telephone:** 785/296-3122  
**E-Mail Address:** [neal.farron@ks.gov](mailto:neal.farron@ks.gov)  
**Web Address:** <https://admin.ks.gov/offices/procurement-contracts>

**Item:** Statewide Auction Services  
**Agency/Business Unit:** Statewide  
**Period of Contract:** Upon Contract Execution through October 31, 2027  
(With the option to renew for two (2) additional 12-month periods)

**Contractor:** Purple Wave, Inc.  
DBA Purple Wave Auction  
825 LEVEE DR  
MANHATTAN, KS 66502-5012

**SMART Supplier ID:** 0000011736  
**FEIN:** 26-0724318

**Contact Person:** Amy Moore  
**E-Mail:** [amy.moore@purplewave.com](mailto:amy.moore@purplewave.com)  
**Toll Free Telephone:** 866-608-9283  
**Local Telephone:** 785-537-5057  
**Cell Phone Number:** 913-558-0276  
**Fax:** 866-604-2264

**Payment Terms:** Net 30

**Political Subdivisions:** Pricing **is** available to the political subdivisions of the State of Kansas.

**Procurement Cards:** Agencies **may** use a P-Card for purchases from this contract.

**Administrative Fee:** Administrative Fees have been incorporated into the unit prices of this contract.

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The above referenced contract award was recently posted to Procurement and Contracts website. The document can be downloaded by going to the following website: <http://www.da.ks.gov/purch/Contracts/>

## 1. Terms and Conditions

### 1.1. Contract Documents

In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:

- Form DA 146a;
- written modifications to the executed contract;
- written contract signed by the parties;
- Purple Wave. Inc. AUCTION ENGAGEMENT AGREEMENT, State of Kansas Agencies & Political Subdivisions
- the Bid Event documents, including any and all amendments; and
- Contractor's written offer submitted in response to the Bid Event as finalized.

### 1.2. Captions

The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.

### 1.3. Definitions

A glossary of common procurement terms is available at <http://admin.ks.gov/offices/procurement-and-contracts>, under the "Procurement Forms" link.

### 1.4. Contract Formation

No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the contractor.

### 1.5. Notices

All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Procurement and Contracts  
900 SW Jackson, Suite 451-South  
Topeka, Kansas 66612-1286  
RE: Contract Number 0000000000000000000000052954

or to any other persons or addresses as may be designated by notice from one party to the other.

### 1.6. Statutes

Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

### 1.7. Governing Law

This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

### 1.8. Jurisdiction

The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution 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 Agreement shall be deemed a waiver of the Eleventh Amendment

### **1.9. Mandatory Provisions**

The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.

### **1.10. Termination for Cause**

The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:

- the Contractor fails to make delivery of goods or services as specified in this contract;
- the Contractor provides substandard quality or workmanship;
- the Contractor fails to perform any of the provisions of this contract, or
- the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

### **1.11. Termination for Convenience**

The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

### **1.12. Rights and Remedies**

If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

### **1.13. Antitrust**

If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.

### **1.14. Hold Harmless**

The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

**1.15. Force Majeure**

The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.

**1.16. Assignment**

The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.

This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.

**1.17. Third Party Beneficiaries**

This contract shall not be construed as providing an enforceable right to any third party.

**1.18. Waiver**

Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.

**1.19. Injunctions**

Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.

**1.20. Staff Qualifications**

The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

**1.21. Subcontractors**

The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.

**1.22. Independent Contractor**

Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

**1.23. Worker Misclassification**

The Contractor and all lower tiered subcontractors under the Contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.

**1.24. Immigration and Reform Control Act of 1986 (IRCA)**

All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the Contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.

The Contractor hereby certifies without exception that such Contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.

Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.

**1.25. Proof of Insurance**

Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to Procurement and Contracts.

**1.26. Conflict of Interest**

The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.

**1.27. Nondiscrimination and Workplace Safety**

The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.

**1.28. Confidentiality**

The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 45-215 et seq.) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor agrees to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by State, shall destroy or render it unreadable.

**1.29. Environmental Protection**

The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

**1.30. Care of State Property**

The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse the State for such property's loss or damage caused by the Contractor, except for normal wear and tear.

**1.31. Prohibition of Gratuities**

Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.

**1.32. Retention of Records**

Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

**1.33. Off-Shore Sourcing**

If, during the term of the contract, the Contractor or subcontractor plans to move work previously performed in the United States to a location outside of the United States, the Contractor shall immediately notify the Procurement and Contracts and the respective agency in writing, indicating the desired new location, the nature of the work to be moved and the percentage of work that would be relocated. The Director of Purchases, with the advice of the respective agency, must approve any changes prior to work being relocated. Failure to obtain the Director's approval may be grounds to terminate the contract for cause.

**1.34. On-Site Inspection**

Failure to adequately inspect the premises shall not relieve the Contractor from furnishing without additional cost to the State any materials, equipment, supplies or labor that may be required to carry out the intent of this Contract.

**1.35. Indefinite Quantity Contract**

This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

**1.36. Prices**

Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

**1.37. Contract Price**

Statewide contracts are awarded by the Procurement and Contracts to take advantage of volume discount pricing for goods and services that have a recurring demand from one or more agencies. However, if a state agency locates a vendor that can provide the identical item at a lower price, a waiver to "buy off state contract" may be granted by the Procurement and Contracts.

**1.38. Payment**

Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor

and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in this contract.

Payment schedule shall be on a frequency mutually agreed upon by both the agency and the Contractor.

### **1.39. Accounts Receivable Set-Off Program**

If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, a state agency, municipality, or the federal government, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. The Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas, state agencies, municipalities, or the federal government. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation is reduced by the amount subject to setoff.

### **1.40. Federal, State and Local Taxes**

Unless otherwise specified, the contracted price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the contracted price. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

### **1.41. Quarterly Reports**

The Contractor shall be required to file a quarterly report by each state agency or political subdivision making purchases under this contract. Reports are due no later than 30 days after the end of each calendar quarter and shall correlate with figures submitted as Administrative Fees (see below). Above referenced reports are to be filed with Procurement and Contracts Open Records Officer or his/her designee located at 900 SW Jackson, Ste. 451-South, Topeka, KS 66612-1286. Reports may also be required to be submitted to the specific using agency.

Electronic files shall be e-mailed to the following e-mail address: [reports@ks.gov](mailto:reports@ks.gov), in Microsoft® Excel or Microsoft® Access Database format.

The required reporting format may be found on Procurement and Contracts website at <http://admin.ks.gov/offices/procurement-and-contracts>, under the "Procurement Forms" link.

Report Types - Reports shall be available reflecting the following information. Agencies and Procurement and Contracts reserve the right to request additional information.

- Sales Summary -- Report shall include a list of agencies and political subdivisions who have used the contract, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
- Items Sold -- Report shall include a list of items sold to agencies and political subdivisions, indicating the contract price and using agency, a subtotal of sales to each agency or political subdivision, as well as a grand total of all sales.
- Items Sold, by Agency - Same as above, except sorted by agency.

**1.42. Administrative Fee**

Contractor(s) must pay a 1/2% (0.005) Administrative Fee on all purchases (including political subdivisions) made against this contract. The fee is to be included in the cost of the goods or services. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas - Procurement and Contracts" and must be paid within 30 days following the end of each quarter. Fees paid under this mandate shall correlate with figures submitted on the quarterly reports.

**1.43. Debarment of State Contractors**

Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in the termination of the contract.

**1.44. Materials and Workmanship**

The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

The Contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the Contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Procurement and Contracts said issue is due to imperfection in material, design, workmanship or Contractor fault.

**1.45. Industry Standards**

If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.

**1.46. Implied Requirements**

All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the specifications, shall be included.

**1.47. Performance Guaranty/Bond (Amount)**

The Contractor shall file with the Director of Purchases a performance guaranty/bond in the amount of \$200,000.00. The purpose of this guaranty is to secure funds held in escrow by the Contractor due to the State of Kansas agencies using this Contract. The guaranty shall be released upon the completion of this contract subject to total or partial forfeiture for failure to adequately perform the terms of this contract. If damages exceed the amount of the guaranty, the State may seek additional damages.

A performance guaranty must be one of the following:

- certificate of deposit payable to the State; or
- a properly executed bond payable to the State.



Necessary bond forms will be furnished by Procurement and Contracts and can be completed by any General Insurance Agent. Bonds shall be issued by a Surety Company licensed to do business in the State of Kansas.

**1.48. Inspection**

The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.

**1.49. Acceptance**

No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.

**1.50. Ownership**

All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.

**1.51. Information/Data**

Any and all information/data required to be provided at any time during the contract term shall be made available in a format as requested and/or approved by the State.

**1.52. Certification of Materials Submitted**

The Bid document, together with the specifications set forth herein and all data submitted by the Contractor to support their response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of the contract between the Contractor and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.

**1.53. Transition Assistance**

In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

**1.54. Integration**

This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.

**1.55. Modification**

This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

**1.56. Severability**

If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

## 2.0 Specifications

The contractor is to provide statewide Auction and Property Disposal Services for State of Kansas agencies and political subdivisions.

The Auction Services shall include the sale of used equipment, furniture, chairs, bookcases, file cabinets, tools, machinery, vehicles. This contract will be used mainly for physical items other than land, buildings, and real estate.

The State reserves the right to allow agencies to perform off contract live auctions or use local auction services for small auction lots if requested to Kansas Office of Procurements and Contracts.

Contract use is for a use if for a full turnkey operation, Contractor may offer however other self-service options at its discretion.

### **Responsibilities:**

1. The contractor shall be responsible for preparing advertisements and placing advertisements, but the State will control the dollar volume spent for each auction. All advertising must be pre-approved by the auction administrator designated by the agency of record.
2. Upon request, the contractor shall arrange any event advertising, merchandise cataloging, merchandise moving, merchandise storage, and merchandise preparation for sale at the expense of the selling agency.
3. The auctioneer shall arrange and accept all forms of payment authorized by the selling agency. Any collection fees including check guarantee fees and credit card discount fees for services requested shall be deducted from the settlement.
4. Any additional expenses above the auction commission must be pre-approved by the auction administrator in the auction engagement agreement. The State reserves the right to provide any of these services through other vendors or internal agencies.
5. The Contractor must provide the State of Kansas with a \$200,000 bond to secure funds held in escrow.
6. *The Contractor is a no reserve auction provider and is unable to place a reserve on specific items. We can work with you and Purple Wave Appraisal Services to determine an approximate price an asset could bring at auction.*
7. In case of a buyer default, the auctioneer will forego any commission on the sale of the item but not be liable for the purchase price.
8. The contractor has the right to impose reasonable fees and penalties upon buyers who request additional services or fail to comply with the terms of the auction. Examples would include collection costs, late pickup fees, shipping and handling fees, rigging and loading fees, and handling fees for non-retrieved merchandise.
9. The Contractor provided service uses a self-service online solution. No transportation to the Contractor or third-party site is anticipated. However if agreed to by the using entity, the state authorizes contractor to start and move equipment to the auction areas and to move items within the auction area for the purpose of arrangement, display or demonstration if required.
10. By utilizing this contract, the state engages the contractor as the agent of the seller for purposes related to the auction. Contractor shall have the authority to execute bills of sale to purchasers at the auction and to receive, demand, and collect sale proceeds.

11. Titles will be signed and sent to contractor for dispersal or proper Power of Attorney forms will be provided to contractor's staff for title distribution. All titles will be filled out with a buyer's name and photocopied prior to being distributed to buyers. Titles will not be distributed until all reasonable actions have been taken to verify that payments are valid. The State of Kansas entity is provided the option to provide the winning purchaser applicable documents at the agreed-upon pickup appointment.
12. The state assumes, and indemnifies contractor, from all risk and liability, which may arise from the failure of consigned articles to comply with government regulations, including environmental regulations, and seller shall pay all costs of cleanup of such articles and any other costs.
13. The contractor agrees to have the final settlement completed within fourteen (14) working days or sooner following the final day of payments as outlined in the terms of the auction, The contractor shall submit for final settlement an accounting of all auction expenses, any pertinent receipts, a summary of all items sold, to whom those items were sold, and the amount for each item sold, the total proceeds of the sale, the auctioneering fee and expenses as agreed, and the net proceeds of the sale to the selling entity.
14. The contractor will be responsible for enforcing all terms of the sale agreed upon by both parties during negotiations and auction planning

**Procedures:**

1. An auction administrator will be designated by each agency to handle the financial and legal communications regarding the auction.
2. An on-site coordinator will be designated by the auction administrator for each physical merchandise location. The on-site coordinator will serve as a point of contact for assistance with physical descriptions, inspection times, any loading assistance offered, pick up arrangements, and shipping arrangements if applicable.
3. The on-site coordinator will oversee the release of the auction merchandise unless other arrangements are made prior to the auction.
4. An auction planning form will be completed which outlines the procedures for merchandise pickup and customer communication with the agency. The coordinator will oversee the completion of all appropriate disclosure forms a minimum of two weeks prior to the auction date.
5. For each agency that uses this state contract, the contractor must prepare an agency engagement letter that outlines the terms of the sale including the commission to be charged, maximum sale expenses and an inventory of the items to be sold in accordance with the terms of this contract.

*The entity using this contract will need to sign and agree to a "Purple Wave. Inc. AUCTION ENGAGEMENT AGREEMENT, State of Kansas Agencies & Political Subdivisions." This is a routine disclosure agreement concerning the items to be sold.*

*Attached are descriptions of the Contractors general service and operational procedures. This information is current of the time of the contract start, contact the Contractor for updates.*

### 3.0 Costing Sheet

This contract is for a fixed price bid. All costs are to be all inclusive (including time, travel, and materials). Under no circumstances will payment be made prior to acceptance of service.

**Commission Fees/Costs:**

|                 |             |                                 |
|-----------------|-------------|---------------------------------|
| Seller Premium: | <u>0</u> %  | and/or \$ <u>not applicable</u> |
| Buyer Premium:  | <u>10</u> % | and/or \$ <u>not applicable</u> |

The Contractor retains the right to charge and retain reasonable fees upon buyers who request additional services or fail to comply with terms of the auction such as collection fees for non-payment, late-pickup, temporary vehicle tags, and similar charges.

Additional Costs/Surcharges if they apply: Not Applicable

PAYMENT TERMS: Net 30 Days

The proposer understands that the proposed costs are the standard cost. The proposer may offer greater discounts if it chooses for a specific task order or request when contacted due to the degree of difficulty and volume of work.

## 4. Contractual Provisions Attachment

DA-146a Rev. 07/19

### 4.1. 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. 07-19), 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 1st day of November 2022.

### 4.2. 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.

### 4.3. 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.

### 4.4. 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 thirty (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 ninety (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.

### 4.5. 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.).

### 4.6. 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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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) Contractor agrees to comply with all applicable

state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

#### **4.7. Acceptance of Contract**

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

#### **4.8. 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.

#### **4.9. 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.

#### **4.10. 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.

#### **4.11. 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.

#### **4.12. 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.

#### **4.13. 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."

#### **4.14. 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.

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** awarding a twelve-month term and supply contract for the furnishing of building, grounds, maintenance, repair and operations supplies for use by various County departments to Lowes OMNIA Partners Cooperative Program under the terms and conditions of Lowes OMNIA Partners Cooperative Program Contract No. R192006, an existing government contract.

**RESOLUTION NO. 21598**, April 8, 2024

**INTRODUCED BY** Megan L. Marshall, County Legislator

WHEREAS, various County departments have a continuing need for building maintenance, repair, and operating (MRO) supplies; and,

WHEREAS, pursuant to section 1030.4 of the Jackson County Code, the Director of Finance and Purchasing recommends the award of a twelve-month term and supply contract for the furnishing of these MRO supplies for various County departments to Lowe's Home Centers, LLC of Mooresville, NC, under the terms and conditions of OMNIA Partners Cooperative Program Contract No. R192006, an existing government contract; and,

WHEREAS, County's' participation in the Lowes Omnia Partner's Cooperative Program would provide the County with a five percent discount and an annual rebate on all sales and will allow the County to take advantage of significant discounts and rebates offered to larger entities; and,

WHEREAS, the Director of Finance and Purchasing recommends the award of the contract to Lowes OMNIA Partners Cooperative Program, under the terms and conditions of Lowes OMNIA Partners Cooperative Program Contract No. R192006, an existing government contract; and,

WHEREAS, pursuant to section 1030.4, Jackson County Code, 1984, the Director of Finance and Purchasing recommends the award under the existing competitively bid government contract for the reason that this will allow the County to take advantage of significant discounts and rebates offered to larger entities; and,

WHEREAS, this award is made on an as needed basis and does not obligate Jackson County to pay any amount, with the availability of funds for specific purchases remaining subject to annual appropriation, which is estimated to be \$150,000.00 for 2024; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that award be made under the existing government contract as recommended by the Director of Finance and Purchasing and that the Director be, and is hereby, authorized to execute for the County any documents necessary for the accomplishment of the award; and,



BE IT FURTHER RESOLVED that the Director of Finance and Purchasing is authorized to make all payments, including final payment on the contract, to the extent that sufficient appropriations to the using spending agencies are contained in the then current Jackson County budget.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

Bryan Covinsky

Bryan Covinsky (Apr 4, 2024 09:49 CDT)

County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 21598 of April 8, 2024, was duly passed on \_\_\_\_\_, 2024 by the Jackson County Legislature. The votes thereon were as follows:

Yeas \_\_\_\_\_

Nays \_\_\_\_\_

Abstaining \_\_\_\_\_

Absent \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Jo Spino, Clerk of Legislature

This award is made on an as needed basis and does not obligate Jackson County to pay any specific amount. The availability of funds for specific purchases is subject to annual appropriation.

04/04/2024

\_\_\_\_\_  
Date

Sylvia Stevenson

Sylvia Stevenson (Apr 4, 2024 10:01 CDT)

\_\_\_\_\_  
Chief Administrative Officer



# Jackson County, Missouri

## Request for Legislative Action

**REQUESTED MEETING DATE:** \_\_\_\_\_ **SPONSOR:** Megan L. Marshall

*To be completed by the County Counselor's Office:*

**NUMBER:** 21598 **ASSIGNED MEETING DATE:** 04/08/2024

**STAFF CONTACT:** John Konon **PHONE:** 816-881-3292

**EMAIL:** jkonon@jacksongov.org

**DEPARTMENT:** Finance

**TITLE:** Buyer

### SUMMARY:

Awarding a twelve-month term and supply contract beginning April 1, 2024 for the furnishing of building and grounds, maintenance, repair and operating (MRO) supplies for various county departments to Lowes Home Centers of Mooresville, NC, under the terms and conditions of the Lowes Omnia Partner's Cooperative Program Contract No. R192006, an existing competitively bid government contract.

Currently The County uses the State of Missouri Contract No. CC222120001 (Resolution No. 21165) which accesses the Omnia NASPO ValuePoint contract for Lowes which give a 7% instore discount only if a Lowes NASPO key fob or sticker is presented at point of sale. The County does not use a key fob or sticker for purchases to avoid possible misrepresentation at point of sale so the County is only receiving a 5% discount. Purchases by County employees are made by presenting Jackson County Employee Identification Card and department business phone.

To provide The County better value, the Finance and Purchasing Department is recommending participating in the Lowes Omnia Partner's Cooperative Program Contract No. R192006, that allows 5% discount on every purchase made at Lowe's PLUS an annual rebate on all sales from January through December payable in March the following year. This will provide The County the security that all purchase made will be by County Employees by presenting Jackson County Employee Identification Card and department business phone PLUS the annual volume rebate as per below:

Annual Purchase Volume Annual Rebate  
\$10,000 - \$24,999 2% rebate  
\$25,000 - \$49,999 4% rebate  
\$50,000 + 7% rebate

If approved the Omnia Partners Cooperative Program is retroactive back to January 1, 2024. The County's Lowes spend for 2023 was \$150,151.65 meaning the County would have received a \$10,510.62 check to be applied to the General Fund.

Pursuant to Section 1030.4 of the Jackson County Code, the Director of Finance and Purchasing recommends the award of a Twelve (12) Month Term and Supply Contract for the furnishing of buildings and grounds, maintenance, repair, and Operations (MRO) supplies for use by various County Departments under the terms and conditions of the Lowes Omnia Partners Cooperative Program Contract No. R192006, an existing competitively bid government contract. This Contract can be used at any Lowes located within Jackson County.

This award is made on as "As Needed" basis and does not obligate Jackson County to pay any specific amount. The Jackson County Compliance portal was checked and the recommended vendor has a current certificate on file showing 2024/12/31 expiration date.

**FINANCIAL IMPACT:** NO

YES

Amount

Fund

Department

Line-Item Detail

**ACTION NEEDED:** AWARD A CONTRACT

**ATTACHMENT(S):**



## LOWE'S Cooperative Contracts for Government Agencies

### OVERVIEW

Lowe's has dedicated Cooperative Contract Programs in place to support the government customer segment.

### Accepting Purchase Orders (PO's)

PO's can be accepted ONLY with an LCA or LPS account. To open an LCA or LPS account, customer to complete these forms and submit to [GovernmentSupport@lowes.com](mailto:GovernmentSupport@lowes.com).

- Lowe's Commercial Account (LCA): Government Letterhead Application Instructions
- LPS Gov Acct Registration Form

### NASPO (National Association of State Procurement Officials) Cooperative Program –#MA3875

- **Focus:** State purchasing agencies are typically required, by the state, to use the NASPO contract.
- 7% for every purchase at the time of purchase when scanning a key fob/sticker.
- 7% - 20% discount when purchasing online at Lowes.com.
- Volume discount in store when order is over \$1500.
- Opted out of MVP rewards
- [www.Lowes.com/NASPO](http://www.Lowes.com/NASPO)

### Omnia Partners Cooperative Program #R192006– (Update 4/30/23 Key Fob program ended)

- **Focus:** City/Local, County, Fire/Safety, Housing Authority, Habitat for Humanity, Non-Profit, School - K-12
- **Admin Fee / Rebate** is on all sales (less returns) from January through December and would pay out yearly around March by check
  - All forms of tender need to be registered on Lowes.com to track for the rebate
- | <u>Annual Purchase Volume</u> | <u>Annual Rebate</u> |
|-------------------------------|----------------------|
| \$10,000 – \$24,999           | 2% rebate            |
| \$25,000 - \$49,999           | 4% rebate            |
| \$50,000 + -                  | 7% rebate            |
- Volume discount in store when order is over \$1500. **Rebate will stack**
- If customer has an LCA or LPS account, they get the **5% discount at point of sale and rebate will stack**
- [www.lowes.com/omnia](http://www.lowes.com/omnia)

### E&I (Educational and Institutional) Cooperative Program #CNR01375 – (4/30/23 Key Fob program ended)

- **Focus:** School - College/University, K12 Schools
- **Admin Fee / Rebate** is on all sales (less returns) from January through December and would pay out yearly around March by check
- All forms of tender need to be registered on Lowes.com to track for the rebate
- | <u>Annual Purchase Volume</u> | <u>Annual Rebate</u> |
|-------------------------------|----------------------|
| \$10,000 – \$24,999           | 2% rebate            |
| \$25,000 - \$49,999           | 4% rebate            |
| \$50,000 + -                  | 7% rebate            |
- Volume discount in store when order is over \$1500. **Rebate will stack**
- If customer has an LCA or LPS account, they get the **5% discount at point of sale and rebate will stack**
- [www.lowes.com/eandi](http://www.lowes.com/eandi)

### MVPs Pro Rewards

**Important:** MVPs Pro Rewards does not automatically enroll in the MVPs Program for government entities.

- Primary Admin of Gov't orgs can opt-in of the MVPs Pro Paint Rewards program via the 'MVPs Pro Rewards Program Opt In Opt Out' link from their profile. > Profile and Preferences > Your Organization page > Go to bottom lower left click Opt in / Out link.

### Lowe's Contacts:

Gary Turnage, WEST Government National Account Manager; 346.436.9185 Cell / [gary.turnage@lowes.com](mailto:gary.turnage@lowes.com)



October 27, 2022

Mr. Scott Matthews  
[scott.matthews@lowes.com](mailto:scott.matthews@lowes.com)  
VP Pro Sales  
Lowe's Home Centers, LLC  
1000 Lowe's Blvd  
 Mooresville, NC 28117

Ending

Re: Renewal Award of Contract #R192006 ✓

Dear Mr. Matthews:

Per official action taken by the Board of Directors of Region 4 Education Service Center on October 25, 2022, Region 4 ESC is pleased to announce that Lowe's Home Centers, LLC has been awarded an annual contract renewal for the following, based on the sealed proposal submitted to Region 4 on December 9, 2019, and subsequent performance thereafter:

**Contract**

Maintenance, Repair and Operations (MRO)  
Supplies & Related Services

The contract will expire on March 31, 2024, completing the fourth year of a five-year term contract. The contract is available through OMNIA Partners, Public Sector. Your designated OMNIA Partners, Public Sector contact is Jessica Goforth, at (210) 729-0281 or [jessica.goforth@omniapartners.com](mailto:jessica.goforth@omniapartners.com).

The partnership between Lowe's Home Centers, LLC, Region 4 and OMNIA Partners, Public Sector can be of great help to participating agencies. Please provide copies of this letter to your sales representative(s) to assist in their daily course of business.

Sincerely,

DocuSigned by:

*Robert Zingelmann*

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Robert Zingelmann

Chief Financial Officer, Finance and Operations Services



October 27, 2023

Mr. Scott Matthews  
[scott.matthews@lowes.com](mailto:scott.matthews@lowes.com)  
VP Pro Sales  
Lowe's Home Centers, LLC  
1000 Lowe's Blvd  
 Mooresville, NC 28117

Renewal

Re: Renewal Award of Contract #R192006 ✓

Dear Mr. Matthews:

Per official action taken by the Board of Directors of Region 4 Education Service Center on October 24, 2023, Region 4 ESC is pleased to announce that Lowe's Home Centers, LLC has been awarded an annual contract renewal for the following, based on the sealed proposal submitted to Region 4 on December 9, 2019, and subsequent performance thereafter:


**Contract**

Maintenance, Repair and Operations (MRO) Supplies & Related Services

The contract will expire on March 31, 2025, completing the fifth year of a five-year term contract. The contract is available through OMNIA Partners, Public Sector. Your designated OMNIA Partners, Public Sector contact is Melissa Williams, at (810) 666-0972 or [melissa.williams@omniapartners.com](mailto:melissa.williams@omniapartners.com).

The partnership between Lowe's Home Centers, LLC, Region 4 and OMNIA Partners, Public Sector can be of great help to participating agencies. Please provide copies of this letter to your sales representative(s) to assist in their daily course of business.

Sincerely,

DocuSigned by:  


AB11C28E709E4C4...  
Robert Zingelmann

Chief Financial Officer, Finance and Operations Services

**IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI**

**A RESOLUTION** authorizing the Jackson County Legislature to hold a closed meeting on Monday, April 8, 2024, for the purpose of conducting privileged and confidential communications between itself and the Jackson County Counselor under section 610.021(3) and (21) of the Revised Statutes of Missouri, and closing all records prepared for discussion at said meeting.

**RESOLUTION NO. 21599**, April 8, 2024

**INTRODUCED BY** Jeanie Lauer, County Legislator

WHEREAS, the Jackson County Legislature desires to hold a closed meeting on Monday, April 8, 2024, during the regularly scheduled meeting of the Legislature; and,

WHEREAS, public notice of such closed meeting has been given by inclusion of this Resolution on the published agenda for said meeting; and,

WHEREAS, the purpose of such closed meeting is to conduct privileged and confidential communications between the Legislature and the Jackson County Counselor concerning the status of personnel issues and significant IT disruption; and,

WHEREAS, such closed meeting is allowable under section 610.021(3) and (21) of the Revised Statutes of Missouri; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the Legislature be authorized to hold a closed meeting during the regularly scheduled meeting of the Legislature on Monday, April 8, 2024, pursuant to section 610.021(3) and (21), RSMo, and closing all records prepared in connection therewith.



Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:

Bryan Covinsky  
Bryan Covinsky (Apr 4, 2024 09:49 CDT)  
County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 21599 of April 8, 2024, was duly passed on \_\_\_\_\_, 2024 by the Jackson County Legislature. The votes thereon were as follows:

Yeas \_\_\_\_\_

Nays \_\_\_\_\_

Abstaining \_\_\_\_\_

Absent \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mary Jo Spino, Clerk of Legislature



**FRANK WHITE, JR.**  
Jackson County Executive

**EXECUTIVE ORDER NO. 24-07**

**TO: MEMBERS OF THE LEGISLATURE CLERK OF THE LEGISLATURE**

**FROM: FRANK WHITE, JR.  
JACKSON COUNTY EXECUTIVE**

**DATE: APRIL 2<sup>nd</sup>, 2024**

**RE: DECLARATION OF A STATE OF EMERGENCY IN JACKSON COUNTY  
DUE TO A POTENTIAL RANSOMWARE ATTACK**

**WHEREAS**, the secure operation of Jackson County's information technology infrastructure is vital to the administration of county services and the welfare of our residents; and

**WHEREAS**, the Jackson County Information Technology Department has identified a cybersecurity incident with characteristics indicative of a ransomware attack, which has impacted numerous county systems that are essential to our residents; and

**WHEREAS**, the full scope and potential impact of the cybersecurity incident are being investigated and necessary measures are being undertaken to ascertain the details and remediate the effects of the incident; and

**WHEREAS**, the occurrence of this event requires a prompt and coordinated response that may necessitate the procurement of services and goods outside the normal procurement procedures as permitted in times of declared emergencies; and

**WHEREAS**, in compliance with the provisions of the Jackson County Code of Regulations, including but not limited to Code Section 1030.3 concerning Emergency

Purchases, it is recognized that in this state of emergency, the usual requirements of competitive bidding are waived to allow for the immediate procurement of necessary resources; and

**WHEREAS**, purchases in excess of twenty-five thousand dollars (\$25,000) under these provisions will be duly reported to the County Legislature at its next regularly scheduled meeting; and

**WHEREAS**, the potential significant budgetary impact of this incident may require appropriations from the County's emergency fund and, if these funds are found to be insufficient, the enactment of additional budgetary adjustments or cuts;

**NOW, THEREFORE**, in accordance with the relevant provisions of the Jackson County Code of Regulations, and the powers vested in this office by the Home Rule Charter of Jackson County,

**IT IS DIRECTED** that all county staff are to take whatever steps are necessary to protect resident data, county assets, and continue essential services, thereby mitigating the impact of this potential ransomware attack.

**IT IS FURTHER ORDERED** that the County Administrator is directed to evaluate the need for appropriations from the County's emergency fund and, if necessary, identify additional financial adjustments to address the fiscal requirements imposed by this emergency. This Executive Order shall take immediate effect and remain in place until it is amended or rescinded by subsequent orders.

**IN WITNESS THEREOF**, I have hereunto set my hand this 2<sup>nd</sup> of April, 2024, and committed to ensuring the security and continuity of services essential to the residents of Jackson County.



---

Frank White, Jr.

Jackson County Executive

02/04/2024