

MINUTES FOR APRIL 4, 2016
BOARD OF CHEROKEE COUNTY COMMISSIONERS
CHEROKEE COUNTY, KANSAS

CONVENE

Chairman Myers called the regular session of the Cherokee County Board of Commissioners (The Board) to order and led all in attendance in the Pledge of Allegiance at 9:00 AM on Monday, April 4, 2016 in the Commission Room, #109 of the Cherokee County Courthouse located at 110 W Maple St., Columbus, Kansas. Commissioners Robert Myers, Pat Collins, Charles Napier, County Counselor Barbara Wright, and County Clerk Rodney Edmondson were present.

Members of the press present: Larry Hiatt, Jordan Zabel, and Machel Smith

The Board signed the KDOT Federal Funds Distribution and Federal Fund Exchange 2016 documents to allow a trade of federal funds to KDOT in exchange for state transportation dollars.

A motion was made by Commissioner Napier to enter an Executive Session for the purpose of Non-Elected Personnel for a period of five minutes with the Board, Counselor Wright, and Clerk Edmondson. The motion was seconded by Commissioner Collins. The motion carried 3-0 at 9:08 AM.

The meeting reconvened at 9:13 AM.

No action was taken during the Executive Session.

Leonard Vanatta - County Road Supervisor

They appeared before the Board on routine county road business. He reported that core drilling will begin today on West 5th Street in Baxter Springs. The project should take just one day.

Mr. Owen Ellison appeared before the Board regarding an undeveloped road with a tract 10'x1320' in length at 20th & Coalfield. He would like to acquire the 10' strip of land. The Board referred the matter to Counselor Wright to review Ellison's documents and to report back to the Board.

A motion was made by Commissioner Napier to approve the Minutes of the BOCC Meeting for March 28, 2016. The motion was seconded by Commissioner Myers. The motion carried 2-0 with Commissioner Collins abstaining.

Commissioner Napier announced that he will not run for a third term as County Commissioner.

Jakob Stockton - Stockton Restoration Company

He appeared before the Board regarding the condition of the exterior of the Courthouse. He recently finished the Pratt County Courthouse and has appointments with Crawford and Bourbon Counties. He submitted a proposal to repair the exterior of the Cherokee County Courthouse. The proposal is a five year contract and renegotiated every five years for continual maintenance of the building after the repairs are made. He stated that he has looked over the Courthouse and reported that it is in bad shape. He stated that there are broken stones and brick movements that he can put his hand in.

He provided a written proposal for the Board to consider for repair to the exterior of the Courthouse. The Board took the proposal under advisement.

Department Heads - Monthly Reports

They met with the Board for their routine monthly meeting for the purpose of updating the Board on happenings within each department, with the following department heads present: Barbara Bilke, Register of Deeds; Betha Elliott, Health Department; Cecil Brown, Noxious Weeds; David Groves, Sheriff; Deana Randall, Human Resources; Art Mallory, Emergency Management; Juanita Hodgson, Treasurer; Mark Hixon, Appraiser; Ralph Houser, Maintenance; Rodney Edmondson, Clerk/Election; Wayne Elliott, 911 Addressing & Mapping; Leonard Vanatta, Road & Bridge.

Barbara Bilke - She provided a written report.

Betha Elliott - She reported that the Health Department had updated school nurses on vaccinations needed for next year.

Cecil Brown - He had nothing new to report.

David Groves - He stated that his department has several community service projects upcoming and several involving local schools. He also stated that the weather spotting class is being held in Baxter Springs tonight.

Deana Randall - She provided the cutoff dates for payroll and accounts payable.

Art Mallory - He reported that Cherokee County had tornado warnings last week. Also, the flood buyout has been submitted to the State of Kansas.

Juanita Hodgson - She provided a Service Agreement with Manatron, Inc. for maintenance renewal on the AS 400 computer system for the Board to consider. She also provided information regarding the renewal of the lease agreement with Pitney Bowes for the postage machine.

Mark Hixon - He informed the Board that his office conducted 105 informal hearings on appraised property values. That was a decrease from 781 conducted last year.

Ralph Houser - He stated that the fire escape was removed from the Courthouse over the weekend as scheduled.

Rodney Edmondson - He reported that his office is preparing for the City Election tomorrow.

Wayne Elliott - He stated that his office sold \$152 in maps, issued six new addresses, and made 16 road signs.

Barbara Wright - County Counselor

She appeared before the Board regarding legal matters concerning Cherokee County.

A motion was made by Commissioner Collins to enter an Executive Session with the Board, Counselor Wright, and Special Counsel for Casino Litigation via telephone for the purpose of Attorney/Client Privilege for a period of 30 minutes. The motion was seconded by Commissioner Napier. The motion carried 3-0 at 10:33 AM.

The meeting reconvened at 11:03 AM.

No action was taken during the Executive Session.

A motion was made by Commissioner Collins to enter an Executive Session with the Board and Counselor Wright for the purpose of Attorney/Client Privilege for a period of 10 minutes. The motion was seconded by Commissioner Napier. The motion carried 3-0 at 11:04 AM.

The meeting reconvened at 11:14 AM.

No action was taken during the Executive Session.

The Board placed the item on the agenda for April 11th at 10:30 AM to conduct another conference call with Special Counsel.

Paul Rogers - Senior Meals Program

He appeared before the Board regarding the senior meals program. He stated that he will be attending a meeting in Wichita on the April 19th regarding the bankruptcy of the meals on wheels program. He stated that there may be a disruption in meal distribution services for a period of time.

Steve Vogel - Galena Citizen

He appeared before the Board regarding the recent ruling in the Casino Litigation. He stated that he has been involved in a casino project for Cherokee County for 11 years and encouraged the Board to go to the end in the fight.

Janet Miller - Cherokee County Economic Development Director

She stated that the Economic Development Board has met last Monday and discussed the building lease for her office. They feel that they should continue with the lease that is set to expire in December as they made an agreement with the Greene's to lease the office space. She stated that they are currently sharing the office with a representative with the E.P.A. and they are paying a small amount for utilities. The Board asked her to review options for office space with Empire, County Extension, and the Courthouse.

A motion was made by Commissioner Myers to enter an Executive Session with the Board and Counselor Wright for the purpose of Attorney/Client Privilege for a period of 10 minutes. The motion was seconded by Commissioner Collins. The motion carried 3-0 at 11:41 AM.

The meeting reconvened at 11:51 AM.

No action was taken during the Executive Session.

A motion was made by Commissioner Collins to extend the contract with Manatron for the AS 400 computer system. The motion was seconded by Commissioner Napier. The motion carried 3-0.

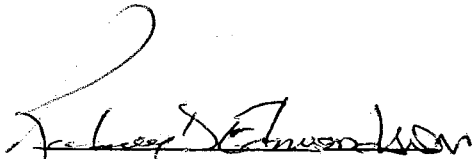
A motion was made by Commissioner Collins to approve the Pitney Bowes Agreement for the postage machine, excluding the folder, until they find out the cost of the folder. The motion was seconded by Commissioner Napier. The motion carried 3-0.

Counselor Wright presented a draft of the Deed concerning the Tri-State Marker and the agreement with the Quapaw Tribe.

A motion was made by Commissioner Myers to approve the Deed, to include the Right of Reversion and the conditions outlined by the Board. The motion was seconded by Commissioner Napier. The motion carried 3-0. Counselor Wright will make the necessary changes and present it to the Board for signatures next week.

Commissioner Collins made a motion to adjourn until the next regular meeting set for Monday, April 11, 2016 at 9:00 AM. The motion was seconded by Commissioner Napier. The motion carried 3-0 at 12:02 PM.

ATTEST: Resolved and ordered this 11th day of April, 2016


Cherokee County Clerk


Commissioner


Commissioner


Commissioner

MANATRON, INC. -
A THOMSON REUTERS BUSINESS
 ("Thomson Reuters Tax & Accounting,
 Government" or "TRTA Gov")
 510 East Milham Avenue
 Portage, MI 49002
 (866) 471-2900 Phone
 (269) 567-2930 Fax

SALES ORDER NO. KS032916CHK

Issue Date: March 29, 2016
 Sales Rep: Sonny Sagar

Hays Office
 1007 West 27th Street
 Hays, KS 67601
 (800) 832-8246 Phone



Customer: Address: City/State/Zip: Attention: Email : Phone:	SHIP TO	BILL TO
	Cherokee County Treasurer	
	110 West Maple	
	Columbus, KS 66725	
	Juanita Hodgson	
	cktreas@columbus-ks.com	
620 429 3848		

Quantity	Part Number	Description	Unit Price	Price	Annual Maintenance	Maintenance Description
1		IBM HWMA & SWMA	\$ 3,205.44	\$ 3,205.44		
		8202-E4D SN # 7AEFT		\$ -		
		Period: 5/30/16 to 5/29/17		\$ -		
				\$ -		
				\$ -		
TOTAL PRICE(S)				\$ 3,205.44	\$ -	

ANY APPLICABLE TAXES, INSURANCE, FREIGHT, AND SHIPPING AND HANDLING WILL BE ADDED TO THE TOTAL UPON INVOICING.

(a) Manufacturer warranty only.
 (b) TRTA Gov System Software Support - System software support includes toll-free telephone assistance and remote diagnostic support.
 All other system software upgrade costs are the Customer's responsibility. All support fees are subject to annual increases.

Professional services and training will be billed as used at the then-current rate plus travel, meals, and expenses.

All returns require prior TRTA Gov approval and manufacturer acceptance.

TAXES: Unless Customer provides TRTA Gov with proof of exemption therefrom, Customer shall pay all applicable taxes levied by any tax authority based upon this agreement, the software, the hardware, and/or any professional services performed by TRTA Gov, excluding any taxes based upon TRTA Gov's income.

DISCLAIMER: Customer acknowledges that they are under contract with TRTA Gov for the acquisition of certain products and agrees to be bound by the terms and conditions of such contract, and further agrees to include ordering additional products under any existing service agreement. CUSTOMER EXPRESSLY AGREES TO ASSUME ALL RESPONSIBILITIES FOR ENSURING THAT CUSTOMER'S SYSTEM IS PROPERLY CONFIGURED TO ACCEPT ANY EQUIPMENT ORDERED ABOVE, HAVING DETERMINED THE POSSIBLE NEED FOR THE CORRECT SOFTWARE USER LICENSES, ADDITIONAL CABLES, ADAPTERS, PORTS, ETC.

If for some reason payment is not received, Customer is responsible for any cancellation penalties or re-stocking fees incurred by TRTA Gov from the manufacturer(s) and for any services provided. Any additional items needed or required after delivery of any equipment ordered above will be charged to Customer accordingly. Any additional services needed will be billed separately as used. Installation will be billed as used on a time-and-materials basis plus travel, meals, and expenses.

THE PRICING INCLUDED IN THIS SALES ORDER WILL EXPIRE THIRTY (30) DAYS FROM THE DATE ISSUED.


 Authorized Customer Signature


 Date Signed

Sonny Sagar
 Authorized TRTA Gov Signature

3/29/2016
 Date Signed



Schedule for ServiceElite Acquired from an IBM Business Partner

This Schedule contains a listing of the Eligible Machines at the Specified Locations identified below for which IBM will provide the identified Services as described in the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations. The complete agreement between us about these Services consists of 1) this Schedule 2) the referenced Master Services Attachment and any referenced Statements of Work and Change Authorizations, and 3) the IBM Customer Agreement (or any equivalent agreement in effect between us).

Name and Address of Customer:

CHEROKEE COUNTY
CHEROKEE COUNTY
COURTHOUSE
100 W MAPLE ST
COLUMBUS KS 66725-1704

Customer Billing Address:

ARROW ENTERPRISE COMPUTING SO
LARRY MAGRO
11545 WILLS RD SUITE 102
ALPHARETTA GA 30009-2098

Business Partner Name and Address:

ARROW ENTERPRISE COMPUTING SO
4400 WEST 96TH ST
INDIANAPOLIS IN 46268-2912

Master Services Attachment Number: MA34S9Q
Statement of Work Number: AM3R0C
Change Authorization Number:
Customer Number: 01210333

Schedule Number: AM3R0C
Revised Schedule: No
Schedule Effective Date: 03/24/2016
ASPID Number: 06861724

Transaction Contract Period:
Start Date: 05/30/2016
End Date: 05/29/2017
Renewal Contract Period: 1 Year(s)

Automatic Inventory Increase Option Applies:
Machine Maintenance Services Option #1: N
Software Services Option #2: N

Price Protection Option: Opt#3 Prepay Price Protection

The Parties need not sign this Schedule, unless either of us requests it.

Agreed to:

CHEROKEE COUNTY

By: Robert Myers
Authorized signature
Name (type or print): Robert Myers
Date: 4/4/16

Agreed to:

International Business Machines Corporation

By: _____
Authorized signature
Name (type or print): _____
Date: _____



Schedule for ServiceElite Acquired from an IBM Business Partner

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. Reinstating Maintenance Services after a lapse in Services may require payment of additional charges.

Machine Description	Manufacturer	Model	Serial Number	Quantity	Service Level	Start Date
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01210333 100 W MAPLE ST

IBM

8202

E4D

00007AEFT

1

B

1



Schedule for ServiceElite Acquired from an IBM Business Partner

Customer Technical Contact Name (if applicable):

-----Eligible Machine Description-----

Unit	Model	Serial Number	Support Service	Product Group	City
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Specified Location 01210333

City, State: COLUMBUS KS 66725-1704

SWMA FOR IBM i

SOFTWARE MAINTENANCE
P05
CHARGEABLE PROCESSORS
FULL SHIFT

8202 E4D 00007AEFT

1



Schedule for ServiceElite Acquired from an IBM Business Partner

Legends:

²TYPE OF REPAIR SERVICE:

- A) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, next business day
- B) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day.
- C) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, 4 hour response objective
This type of repair Service includes a response objective and is not a guarantee.
- D) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day, 2 hour response objective.
This type of repair Service includes a response objective and is not a guarantee.
- X) EasyServe (remotely delivered services)

³MAINTENANCE SERVICES

- 1) Maintenance of IBM Machines
- 2) Maintenance of Non-IBM Machines
- 3) Warranty Service Upgrade
- 18) Post Installation Coverage (PIC) Service Upgrade, for selected Non-IBM Machines

FUND EXCHANGE MASTER
CHEROKEE COUNTY, KANSAS

**FEDERAL-AID
FUND EXCHANGE
MASTER AGREEMENT**

This MASTER AGREEMENT is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and **CHEROKEE COUNTY, KANSAS** (the "County"), collectively, the "Parties."

RECITALS:

- A. The Secretary has authorized a Federal Fund Exchange Program under which local units of government may exchange some or all of the Federal Funds allotment by KDOT to the local unit in a specific federal fiscal year for State Funds allocated to the Secretary.
- B. The County desires to exchange all or a portion of the County's annual allotment of Federal Funds for State Funds at the Exchange Rate or to bank all or a portion of its annual allotment, such amount to be used in the future for either a Federal-Aid Project or exchanged for State Funds at the Exchange Rate.
- C. The Secretary and the County are empowered by the laws of Kansas to enter into agreements incident to the financing, construction, and maintenance of county roads utilizing federal or state funds.
- D. The Parties have determined the Federal Fund Exchange Program would be most efficiently administered under this Master Agreement.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS:

As used in this Agreement, the capitalized terms below have the following meanings:

1. "**Agreement**" means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. "**Banked Funds**" means the County's annual allotment of Federal Funds which the County has decided to use in the future for either a Federal-Aid Project or to be exchanged for State Funds.
3. "**County**" means the Cherokee County, Kansas.
4. "**Effective Date**" means the date this Agreement is signed by the Secretary or his designee.

5. **“Exchange Rate”** means the exchange of Federal Funds allotment for State Funds at a rate of ninety percent (90%) of State Funds for one hundred percent (100%) of local federal obligation authority for costs incurred pursuant to this Agreement, on a reimbursement basis.
6. **“Exchanged Funds”** means the funds from the County’s annual allotment of Federal Funds exchanged for State Funds at the Exchange Rate.
7. **“Exchanged Portion”** means a portion of funds from the County’s annual allotment of Federal Funds exchanged for State Funds.
8. **“Federal Funds”** means federal-aid transportation funds, including Surface Transportation Program funds, for use on state and local federal-aid transportation projects.
9. **“Fund Exchange Request”** means the attached form “Attachment A” which is submitted by the County to KDOT to request the exchange of Federal Funds for State Funds in any given year, and the terms of which are incorporated herein by reference.
10. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
11. **“Parties”** means the Secretary and KDOT, individually and collectively, and the County.
12. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
13. **“State Funds”** means State of Kansas transportation funds.

ARTICLE II

TERMS OF AGREEMENT:

1. **Secretary Authorization.** The Secretary is authorized by the County to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this exchange.
2. **Incorporation of Program Application.** The County will submit a Fund Exchange Request when it desires to exchange its Federal Funds. The Fund Exchange Request will be incorporated into and made a part of this Agreement for all purposes.
3. **Exchange of Funds.**
 - (a) When the County submits a Fund Exchange Request to use the Banked Funds for a Federal-Aid Project, the Secretary will apply one hundred percent (100%) of the requested amount to said project, up to the amount indicated on the Fund Exchange Request.

- (b) When the County submits a Fund Exchange Request, to use the Exchanged or Banked Funds pursuant to the Federal Fund Exchange Program, the following terms will apply to the exchange:
 - (i) The County authorizes the Secretary to retain and use the Exchanged Portion of the County's annual allotment of Federal Funds for the federal fiscal year indicated in the Fund Exchange Request in exchange for State Funds at the Exchange Rate.
 - (ii) The Secretary shall reimburse the County, with State Funds, for one hundred percent (100%) of costs incurred pursuant to this Agreement, up to ninety percent (90%) of the amount of funds as indicated on the Fund Exchange Request. All costs incurred in excess of the fund exchange amount will be the sole responsibility of the County.
 - (iii) Any State Funds exchanged pursuant to this Agreement may be carried over in the next federal fiscal year by the County. Banking of Exchanged Funds is limited to three (3) consecutive fiscal years, unless written approval is obtained from the Secretary.
 - (iv) The County understands that the Secretary may use the retained Federal Funds exchanged by the County for any federally eligible purpose or project within the State.
 - (v) The Secretary will make partial payments to the County for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing showing costs paid by the County and any reimbursement form required by KDOT.

4. **Limitations on Use of State Funds.**

- (a) The County shall not deposit the exchanged State Funds into the operating budget for the County.
- (b) The County shall use the State Funds exchanged pursuant to this Agreement for:
 - (i) transportation projects, as approved by the Secretary, which are eligible under KDOT's Federal Fund Exchange Guidelines; and
 - (ii) for all phases of approved transportation project(s) including, but not limited to preliminary engineering, right of way acquisition, utility relocation, construction and inspection.
- (c) Upon completion of the transportation project, the County shall notify Secretary and allow the Secretary to participate in a final review of the project. Reviews by the Secretary are not done for the benefit of the County or its contractors, or agents, or other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, surveys, and any

necessary investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the County.

5. **Availability of State Funds.** The total dollars exchanged under this Agreement are contingent upon the availability of State Funds. If, in the judgment of the Secretary, sufficient State Funds are not appropriated to continue the function performed in this Agreement, the Secretary may terminate this Agreement without further notice. The Secretary will not be responsible to the County for any reduction in State Funds.
6. **Availability of Federal Funds.** The total dollars exchanged under this Agreement are also contingent upon the availability of Federal Funds. If, due to Congressional funding restrictions, sufficient Federal Funds have not been allocated to the County, the Secretary shall exchange funds in the amount available.
7. **Audit.** The County will participate and cooperate with the Secretary in an audit which will occur either annually or by project. The County shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with State Funds to the County for items considered non-participating, the County shall promptly reimburse Secretary for such items upon notification by Secretary.
8. **Compliance with Federal and State Laws.** The County shall comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances governing the projects undertaken pursuant to this Agreement.
9. **Right of Way Acquisition.** All right of way acquisition for the project shall be done in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. Part 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.
10. **Legal Authority.** The County shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.
11. **Indemnification.** To the extent permitted by law, the County agrees to defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the County or the County's employees.

ARTICLE III


GENERAL PROVISIONS:

1. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

- 2. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.
- 3. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the County and their successors in office.
- 4. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- 5. **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.
- 6. **Effective Date.** This Agreement will become effective as of the date signed by the Secretary or his designee.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.


ATTEST:

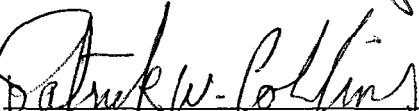

 COUNTY CLERK 4/4/16
(Date)

(SEAL)

CHEROKEE COUNTY, KANSAS


 CHAIRPERSON


 MEMBER


 MEMBER

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By: _____
 Jerome T. Younger, P.E. (Date)
 Deputy Secretary and
 State Transportation Engineer

(Example Fund Exchange Request)



KANSAS DEPARTMENT OF TRANSPORTATION
BUREAU OF LOCAL PROJECTS
REQUEST TO EXCHANGE FEDERAL FUNDS UNDER THE FEDERAL-AID FUND
EXCHANGE MASTER AGREEMENT

Date: 4/4/14

County/City:

Cherokee

Federal Funds to Be Exchanged: _____

The Secretary of Transportation is hereby requested to make available to the city/county State Funds in exchange for the city's/county's allotment of Federal Funds in the amount stated above. The Exchange will be made under the Terms and Conditions as set forth in the city/county's Federal Fund Exchange Master Agreement previously executed between the city/county and the Secretary. This request shall be attached to and become a part of the city/county's Federal Funds Exchange Agreement.

Contact Person: Rodney Edmondson Title: County Clerk

Address: PO Box 14, 110 W. Maple, Columbus KS 66725

Phone: 620-429-2042 Email: rodney.clerk@cherokee-county-ks.gov

Robert Myers 4/4/14
 Signature* Date

Robert Myers
 Typed or Printed Name

Commission Chair
 Title

**The representative signing this request must be authorized by law to bind the city/county to an agreement.*

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

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

Nondiscrimination Clauses

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

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

