



FORT HAYS STATE UNIVERSITY

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Addendum

Date: March 2, 2021

RFQ Number: 21017

Addendum: 1

Closing Date: Extended to Monday, March 8, 2021

Fort Hays State University Purchasing Office

Telephone: 785-628-4251

Fax: 785-628-4046

E-Mail Address: purchasing@fhsu.edu

Web Address: <http://www.fhsu.edu/purchasing/bids>

Item: Provide and Install PVC Swimming Pool Lining System

Agency: Fort Hays State University (FHSU), Hays, KS

Conditions:

1. Clarification: Contractor to provide and install a new 5 13/16" tall stainless steel membrane termination skirt continuously welded directly beneath the existing stainless steel gutter system and to the existing pool wall with aluminum drive anchors (for future skirt replacement) in which the PVC membrane will be terminated to via a white PVC compression strip, cover and stainless steel screws. This shall be provided in base bid in lieu of the standard termination strip as noted on the drawings and the stainless steel perimeter compression flange as noted in the General Notes. Any additional questions or clarifications can be requested via email, tjsteiner@fhsu.edu.
2. Bid has been extended to Monday, March 8, 2021.

A signed copy of this Addendum must be submitted with your bid. If your bid response has been returned, submit this Addendum by the closing date indicated above.

I (We) have read and understand this addendum and agree it is a part of my (our) bid response.

NAME OF COMPANY OR FIRM: _____

SIGNED BY: _____

TITLE: _____ DATE: _____



FORT HAYS STATE UNIVERSITY

Forward thinking. World ready.

REQUEST FOR QUOTE #: 21017

Date Emailed: February 24, 2021

Closing Date: ~~Thursday, March 4, 2021~~ Monday, March 8, 2021 by 4:30 p.m.

RETURNED SIGNED QUOTE TO:

Fort Hays State University (FHSU)

Purchasing Office bid solicitation site:

<https://fhsu.edu/purchasing/bids/index.html>

It shall be the bidder's responsibility to monitor this website on a regular basis for any changes/addenda, <http://www.fhsu.edu/purchasing/bids>.

Purchasing Office Contact Information:

Telephone: 785-628-4251

Fax: 785-628-4046

Email: purchasing@fhsu.edu

INSTRUCTIONS TO BIDDERS:

1. The FHSU Purchasing Office is the only point of contact for this RFQ. When communicating, always refer to the quotation number.
2. To be considered, one copy of this quotation, with your bid properly filled in, must be signed and returned to the FHSU Purchasing Office by the specified closing date. E-mail and late bids cannot be considered.
3. **Submit bid response through FHSU's bid solicitation site, Vendor Registry:** <https://fhsu.edu/purchasing/bids/index.html>.
4. Bid must be in U.S. Dollars (\$US) excluding Federal Excise/State Sales Taxes.
5. All prices and conditions must be shown. Additions or conditions not shown on this bid will not be allowed.
6. Bid for comparable merchandise will be considered, unless the specifications indicate "no substitution".
7. Bidder must specify exceptions to any requirement or specification in the bid.
8. Bid must include complete specifications and/or descriptive literature to facilitate consideration.
9. Please browse our web-site for similar pending requests.
10. **THIS IS NOT AN ORDER.**

Description of Project

Fort Hays State University seeks proposals from qualified contractors to provide and install PVC swimming pool lining system. Contractor to remove and replace existing PVC, pool membrane with new 60 mil. PVC membrane, pressure test and passivation to existing stainless steel gutter system, provide and install new stainless steel perimeter compression flange, and all other required pool system terminations in order to ensure a watertight installation as per drawings and specifications. Project to begin Monday, May 17, 2021 and must be completed by Friday, July 30, 2021.

Contact Troy Steiner, FHSU Architect, at 785-628-4437 or tjsteiner@fhsu.edu for a site visit or if have technical questions.

Upon award, the necessary bond forms will be furnished by Fort Hays State University Purchasing Office to be completed: Public Works Bond and Performance Bond. The supplier will also present Certificates of Insurance to the FHSU Purchasing Office evidencing the following coverage during the performance of the Services:

- (a) Worker's Compensation with statutory limits;
- (b) Employers Liability, with a minimum \$1,000,000 limit of liability per occurrence;
- (c) Commercial General Liability, including Contractual Liability coverage, with the following minimum limits of liability: \$1,000,000 per occurrence for Bodily Injury and Property Damage, and \$1,000,000 General Aggregate.

\$ _____ (lot price)

TOTAL DELIVERED PRICE (FOB Destination Prepaid & Allowed)

TO BE CONSIDERED, THE FOLLOWING INFORMATION MUST BE PROVIDED BY THE BIDDER:

DATE _____
 TERMS _____
 DELIVERY WILL BE MADE _____ DAYS A.R.O.
 F.O.B. DEST. Fort Hays State University, Hays, KS 67601
 F.E.I.N. OR S.S.N. _____
 NAME _____
 ADDRESS _____
 CITY _____ ST _____ ZIP _____

SIGNED BY _____
 PRINT OR TYPE NAME _____
 TITLE _____
 TELEPHONE # _____
 FAX # _____
 E-MAIL ADDRESS _____
 CHECK IF APPLICABLE
 Small Business _____ Woman-Owned _____ Minority-Owned _____

State Credit Card: Presently, FHSU uses a State of Kansas Procurement Card (Visa) in lieu of a state warrant to pay for some of its purchases. State of Kansas Law does not allow retailers to charge a credit fee for using their cards. (Refusal will not be a determining factor in award of this contract.) Will the credit card be allowed for purchases? Yes _____ No _____

Specifications

ADHERED PVC SWIMMING POOL LINING SYSTEM

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section includes the following:
 - 1. 60 mil thick (70 mil with embossing) reinforced with a non wicking 9 threads x 9 threads per inch PVC pool renovation membrane with acrylic stain guard top coating based on a performance specification.

1.3 PERFORMANCE REQUIREMENTS

- A. General: Provide installed PVC swimming pool lining system that remain watertight; do not permit the passage of water; and resist specified defects.
- B. Material Compatibility: Provide PVC lining system materials that are compatible with one another under conditions of service and application required, as demonstrated by PVC lining system manufacturer based on testing and field experience.

1.4 SUBMITTALS

- A. Product Data: For each type of product indicated.
- B. Shop Drawings: Include plans, elevations, sections, details, and attachments to other Work.
 - 1. PVC lining system terminations.
 - 2. PVC lining system connections to existing pool structures.
- C. Installer Certificates: Signed by PVC lining system manufacturer certifying that Installer is approved, authorized, or licensed by manufacturer to install PVC lining system.
- D. Manufacturer Certificates: Signed by PVC lining system manufacturer certifying that PVC lining system complies with requirements specified in "Performance Requirements" Article.
 - 1. Submit evidence of meeting performance requirements.
- E. Qualification Data: For Installer and manufacturer.
- F. Maintenance Data: For PVC lining system to include in maintenance manuals.
- G. Warranties: Special warranties specified in this Section.

1.5 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified firm that is approved, authorized, or licensed by PVC lining system manufacturer to install manufacturer's product and that is eligible to receive manufacturer's warranty.
- B. Source Limitations: Obtain components for PVC lining system from same manufacturer as PVC lining system approved by PVC lining system manufacturer.

1.6 DELIVERY, STORAGE, AND HANDLING

- A. Deliver PVC liner materials to Project site in original containers with seals unbroken and labeled with manufacturer's name, product brand name and type, date of manufacture, and directions for storing and mixing with other components.
- B. Store liquid materials in their original undamaged containers in a clean, dry, protected location and within the temperature range required by PVC lining system manufacturer.
 - 1. Discard and legally dispose of liquid material that cannot be applied within its stated shelf life.
- C. Protect PVC liner materials from physical damage and from deterioration by sunlight, moisture, soiling, and other sources. Store in a dry location. Comply with PVC lining manufacturer's written instructions for handling, storing, and protecting during installation.

1.7 PROJECT CONDITIONS

- A. Site Limitations: Proceed with installation only when existing project site has been prepared by the contractor to a level in accordance with the supplier's requirements. All burrs and rough edges shall be ground smooth or covered, pits and voids shall be filled with a vinyl concrete patch compound. All working cracks, expansion joints or voids shall be isolated from the 10.5 oz poly felt layer above by the installation of

rigid stainless or plastic strips. All oil and tar must be removed from the pool or covered with appropriate isolation materials. All portions of the PVC lining system to be installed according to manufacturer's written instructions and warranty requirements.

1.8 WARRANTY

- A. Special Warranty: Manufacturer's standard form, without monetary limitation, in which manufacturer agrees to repair or replace components of PVC lining system that fail in materials or workmanship within specified warranty period. Failure includes but is not limited to delamination, pitting, cracking and leaking.
 - 1. Special warranty includes PVC lining membrane, terminations, connections, fasteners, heat welds and other components of membrane lining system.
 - 2. Warranty Period: 10 years from date of Substantial Completion.
- B. Special Project Warranty: Submit PVC liner Installer's warranty, signed by Installer, covering Work of this Section, including all components of PVC lining membrane such as PVC lining membrane, terminations, connections, fasteners and heat welds, for the following warranty period:
 - 1. Warranty Period: Two years from date of Substantial Completion.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

- A. In other Part 2 articles where subparagraph titles below introduce lists, the following requirements apply for product selection:
 - 1. Manufacturers: Subject to compliance with requirements, provide products by the manufacturers specified or approved equal.

2.2 PVC POOL MEMBRANE

- A. PVC Pool Membrane: Flexible polyester PVC membrane reinforced with non-wicking polyester scrim fabric 1000 D yarn 9x9 per inch count, compounded with UV inhibitors and antifungal agents, and as follows:
 - 1. Manufacturers:
 - a. RenoSys Corporation.
 - b. Natare Corporation.
 - 2. Thickness: 60 mils (1.5 mm), nominal.
 - 3. Break Strength:
 - @ Yield: MD 181 lbs/in – TD 161 lbs/in; ASTM D 638.
 - @ Break: MD 117 lbs/in – TD 85 lbs/in; ASTM D 638.
 - @ Yield: MD 418 lbs/in – TD 328 lbs/in; ASTM D 751.
 - @ Break: MD 375 lbs/in – TD 345 lbs/in; ASTM D 751.
 - 4. Tear Resistance: MD 25 lbs – TD 26.7 lbs; ASTM D 1004
 - 5. Cold Flex Resistance: Pass -50 deg. C; ASTM D 2136.
 - 6. Dim. Stability: MD -0.6% - TD +0.2%; ASTM D 1004 (1 hr 100 deg. C).
 - 7. Specific Gravity: 1.235; ASTM D 752.
 - 8. Water Resistance: +0.5% wt. change; ASTM D 570.
 - 9. Puncture Resistance: 123 lbs; ASTM D 4833.
 - 10. Delam. Resistance: MD 12 lbs/in.
 - 11. UV Resistance: 90% retained after exposure; ASTM D 4355.
 - 12. Exposed Face Color and Texture: As selected by Architect from manufacturer's full range of colors and textures.

2.3 AUXILIARY MATERIALS

- A. General: Auxiliary materials recommended by PVC pool membrane system manufacturer for intended use and compatible with PVC pool membranes.
 - 1. Liquid-type auxiliary materials shall meet VOC limits of authorities having jurisdiction.
- B. Racing lanes, targets and marking strips: Manufacturer's standard black markings as per local pool codes.
- C. Anti-microbial product: **Manufacturer's standard product which is fully compatible with the PVC membrane and shall be sprayed or rolled on under the felt material to discourage microbial growth under the system.**
- D. Bonding Adhesive: Manufacturer's standard bonding adhesive that are not weakened when exposed to water immersion and are fully compatible and suitable for bonding to PVC membrane, Geotextile fabric and pool walls. PVC adhesives shall be resistant to Plasticizer migration and water impermeable RenoBond or Nordot 34 or as approved by PVC pool membrane system manufacturer.
- E. Geotextile fabric: 10.5 oz. felt underlayment to be fully adhered with appropriate adhesives throughout entire pool.

- F. Terminations: PVC coated stainless steel metal or as required to make for manufacturer's satisfactory installation termination. Galvanized PVC coated steel shall not be acceptable.
- G. Flanges at penetrations: Constructed of Type I Exterior grade Hard PVC sheet and custom fabricated, radiused and drilled as required for use at all membrane penetrations. No PVC foam based or foam core compression flanges shall be permitted.
- H. Joint Covers: 6" wide plastic plate or 25 gauge stainless steel plate shall be installed over all active expansion joints and working cracks. Galvanized steel shall not be acceptable.
- I. Caulking: Novagard Underwater Grade Caulk or approved equal.
- J. Fasteners: Manufacturer's standard stainless steel metal fasteners.
- K. Miscellaneous Accessories: Membrane supplier shall provide complete care instructions, PVC underwater patch kit, warranty certificate and spare material as might be required. Owner's agent is also to be trained in the proper method of repairing the membrane as a part of this installation.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine substrates, areas, and conditions, with Installer present, for compliance with the following requirements and other conditions affecting performance of pool lining product:
 1. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 PREPARATION

- A. The pool shall be prepared for the installation of the membrane in accordance with the supplier's technical data and these specifications.

3.3 INSTALLATION AND APPLICATIONS

- A. Installation shall be performed by installers certified competent by the supplier whose experience is fully in compliance with the terms of these specifications. The PVC membrane installation shall be completely supported by the structural walls in all respects. The material shall be completely supported by structural walls at all corners and wall/floor junctures before the pool is filled. Due to the inordinate stress induced at seams and fittings by water pressure stretch fitting- in no case shall gaps, voids or spaces be allowed behind the membrane before water is added.
- B. The installation procedures employed in the execution of this project are to be fully in accordance with the supplier's recommendations and current Technical Data. If any terms or conditions of this contract contradict recommended procedures of the manufacturer or supplier, work will be performed in accordance with manufacturer's and supplier's requirements however written notice of any variances from these specifications must be provided to the project architect in advance of any actual work performed in the field.
- C. Work is to be performed as follows:
 - a) Prepare pool surface as per specifications and supplier's recommendations.
 - b) Span any cracks or voids with 25 ga. Stainless Steel sheet or 1/8" hard plastic plate and pin in place with appropriate fasteners.
 - c) Apply sanitizing agent.
 - d) Apply adhesive to pool walls and floors where required and attach 10.5 oz poly felt to all walls and floor. Trim at compression fittings.
 - e) Apply poly felt material throughout pool with water insoluble adhesives.
 - f) Install PVC coated Stainless Steel where required.
 - g) Apply PVC membrane to pool as detailed in the plans and overlap weld (allowing a 2" overlap) with a minimum 3/4" wide weld. All hand welding is to be performed with a Leister hot air welder. No Solvent welding, glue welding or THF Swell agent welding is permitted on this project. No voids at wall/floor junctures shall be permitted in this installation. No double stick tapes are permitted.
 - h) Provide PVC markings, targets, racing lanes, logo etc. as required and directed by plans and code. End targets shall be fully bonded to the wall.
 - i) Attach Compression flanges and gaskets as shown on the drawings or in accordance with supplier's recommendations. Bolt spacing shall not be greater than 3" o.c. All fastener heads shall be countersunk.
 - j) Prime and caulk the perimeter termination and wherever else required to make for a suitable and proper watertight fitting.
 - k) Inspect all seams in the pool with a roofing probe to ascertain that there are no false welds, pinholes or missed areas. Seal all seam edges with edge sealant if required in installation bulletins.

- l) Broom clean the pool and surrounding deck area. Remove any marks or dirty spots. Remove all trash and debris and dispose of off site.
- m) Provide a service and care session of approximately one hour with the owner's designated agent. Provide patch kit, care instructions in a written format, plus 100 square feet of color matched patch material.

3.4 FIELD QUALITY CONTROL

- A. Final Pool Inspection: Arrange for PVC pool membrane system manufacturer's technical personnel to inspect pool membrane installation on completion and submit report to Architect.
 - 1. Notify Architect or Owner 48 hours in advance of date and time of inspection.
- B. Repair or remove and replace components of pool membrane system where test results or inspections indicate that they do not comply with specified requirements.

3.5 PROTECTING AND CLEANING

- A. Protect pool membrane system from damage and wear during remainder of construction period. When remaining construction will not affect or endanger pool membrane, inspect pool membrane system for deterioration and damage, describing its nature and extent in a written report, with copies to Architect and Owner.
- B. Correct deficiencies in or remove pool membrane system that does not comply with requirements, repair substrates and repair or reinstall pool membrane system to a condition free of damage and deterioration at time of Substantial Completion and according to warranty requirements.
- C. Clean overspray and spillage from adjacent construction using cleaning agents and procedures recommended by manufacturer of affected construction.

END OF SECTION

TERMS AND CONDITIONS

1. It is the intent of Fort Hays State University (FHSU) to permit competitive bidding. It is the bidder's responsibility to advise the FHSU Purchasing Office, in writing, no later than three (3) business days before the bid closing date, if any specification or requirement described herein limits bidding to a single source.
2. Unless otherwise specified, Fort Hays State University reserves the right to accept or reject all or any part of your quotation, and to waive technicalities.
3. Offered payment discounts will NOT be considered in determining the low bid. The discount period begins on the date of delivery, or acceptance, or receipt of a correct invoice by the receiving agency, whichever is later.
4. Except as otherwise indicated, the merchandise quoted is in new condition.
5. Fort Hays State University reserves the right to award purchases by item, by group, or by lot, whichever is deemed to be in the university's best interest.
6. In the event of a tie for the low bid, the award will be made to the Kansas bidder.
7. Unit price will prevail in the event of extension error(s).
8. If awarded a purchase order, the bidder agrees to furnish the item(s) or provide the service(s) enumerated hereon at the price(s) quoted and in accordance with the conditions indicated.
9. If a bid indicates that an item quoted is functionally equivalent and it is purchased and found not to be comparable, Fort Hays State University reserves the right to return that item at the bidder's expense, and the bidder will be billed for the difference in cost between this bid and the successful bid.
10. If any portion of this bid is provided by a vendor other than the bidder, the bidder remains the prime contractor responsible for fulfilling all requirements of this bid.
11. Contracts or purchase orders resulting from this quotation may not be assigned without prior written consent of the FHSU Director of Purchasing.
12. The seller agrees to protect Fort Hays State University from all damages arising out of alleged patent infringement.
13. Partial payments will not be made, unless otherwise specified.
14. Bid results are available by written request with a check payable to Fort Hays State University for five dollars (\$5.00) per request, tax included, with a stamped, self-addressed envelope. Unless otherwise requested, your canceled check will serve as your receipt.
15. Any conviction for a criminal or civil offense that indicates a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a state contractor must be disclosed. This is to include (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract of subcontract or in the performance of such contract of 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 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 action in concert with one or more individuals or entities, owns or controls twenty-five percent (25%) or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in disqualification of the bid or termination of the contract.
16. If any part of this contract (including any required installation) is fulfilled by any other contractor, the successful bidder remains responsible for completing all aspects of the work described herein.
17. Vendors who are new to the university should complete a vendor registration form found at: <https://vrapp.vendorregistry.com/Vendor/Register/Index/fort-hays-state-university-ks-vendor-registration>. A copy of the vendor's W-9 should also be submitted with your bid: <http://www.irs.gov/pub/irs-pdf/fw9.pdf?portlet=3>.

TAX CLEARANCE

Fort Hays State University strongly supports the State of Kansas Tax Clearance Process. Vendors submitting bids or proposals which exceed \$25,000 over the term of the contract shall include a copy of a Tax Clearance Certification Form with their submittal. Failure to provide this information may be cause for rejection of vendor's bid or proposal.

A "Tax Clearance" is a comprehensive tax account review to determine and ensure that the account is compliant with all primary Kansas Tax Laws administered by the Kansas Department of Revenue (KDOR) Director of Taxation. Information pertaining to a Tax Clearance is subject to change(s), which may arise as a result of a State Tax Audit, Federal Revenue Agent Report, or other lawful adjustment(s).

To obtain a Tax Clearance Certificate, you must:

- Go to <https://www.kdor.ks.gov/apps/taxclearance/Default.aspx> to request a Tax Clearance Certificate
- Return to the website the following working day to see if KDOR will issue the certificate
- If issued an official certificate, print it and attach it to your bid response
- If denied a certificate, engage KDOR in a discussion about why a certificate wasn't issued

Bidders (and their subcontractors) are expected to submit a current Tax Clearance Certificate with every event response.

Please Note: Individual and business applications are available. For applications entered prior to 5:00 PM Monday through Friday, results typically will be available the following business day. Tax clearance requests may be denied if the request includes incomplete or incorrect information.

Please Note: You will need to sign back into the KDOR website to view and print the official tax clearance certificate.

A copy of the Certification of Tax Clearance form received from the Kansas Department of Revenue should be sent along with the bid response(s) to:

Fort Hays State University
Purchasing Office
601 Park Street, Sheridan Hall 318
Hays, KS 67601

Failure to provide this information may be cause for rejection of vendor's bid or proposal.

Information about Tax Registration can be found at the following website:

<http://www.ksrevenue.org/forms-btreg.html>.

The FHSU Purchasing Office reserves the right to confirm tax status of all potential contractors and subcontractors prior to the release of a purchase order or contract award.

In the event that a current tax certificate is unavailable, the FHSU Purchasing Office reserves the right to notify a bidder (one that has submitted a timely event response) that they have to provide a current Tax Clearance Certificate within ten (10) calendar days, or FHSU may proceed with an award to the next lowest responsive bidder, whichever is determined by the Purchasing Director to be in the best interest of FHSU and the State.

**CERTIFICATION REGARDING
IMMIGRATION REFORM & CONTROL**

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-subcontractor. The usual method of verification is through the Employment Verification (I-9) Form. With the submission of this bid, the Contractor hereby certifies without exception that 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 and any applicable damages.

Contractor certifies that, should it be awarded a contract by the State, Contractor will comply with all applicable federal and state laws, standards, orders and regulations affecting a person's participation and eligibility in any program or activity undertaken by the Contractor pursuant to this contract. Contractor further certifies that it will remain in compliance throughout the term of the contract.

At the State's request, Contractor is expected to produce to the State any documentation or other such evidence to verify Contractor's compliance with any provision, duty, certification, or the like under the contract.

Contractor agrees to include this Certification in contracts between itself and any subcontractors in connection with the services performed under this contract.

Signature, Title of Contractor

Date

State of Kansas
Fort Hays State University
DA-146a (Rev. 12/19)

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. 12/19), 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.

- 1. 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. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require Fort Hays State University or any of its affiliates ("University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 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, the University may terminate this agreement at the end of its current fiscal year. The University 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 under the contract for which it has not been paid. The University will pay 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 under this provision, title to any such equipment shall revert to contractor at the end of the University'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. Kansas Law and Venue:** All matters arising out of or related to this agreement shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit arising out of or related to this agreement shall reside only in courts located in the State of Kansas.
- 5. Required Non-Discrimination Provision:** Contractor agrees to comply with all applicable state and federal anti-discrimination laws. Contractor specifically 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 or if it is determined that the contractor has violated applicable provisions of ADA, such violation(s) shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the University. The provisions of this paragraph (except the 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 University cumulatively total \$5,000 or less during the fiscal year.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take

affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

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 University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does 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 or rights of action available to the University at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **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 University 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 University 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 the University to establish a "self-insurance" fund to protect against any such loss or damage.
11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, 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 of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or 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.
14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.
15. **Boycotts of Israel Prohibited:** Kansas 2018 HB 2482 generally prohibits the University from entering into a contract with a company to acquire or dispose of services, supplies, information technology or construction, unless such company submits a written certification that such company is not currently engaged in a boycott of Israel. For the purposes of this Section, "company" means an organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage. Accordingly, by executing this contract, Contractor hereby certifies that it is not currently engaged in a boycott of Israel.
16. **Harassment Policy:** Fort Hays State University prohibits sexual harassment, discrimination, and retaliation. The University's applicable policies on sexual harassment, discrimination, and retaliation are available at <https://fhsu.edu/policies/documents/harassment-policy/index.pdf> and include the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint. Contractor and its employees, officials, agents, or subcontractors shall at all times comply with the University's policies on sexual harassment, discrimination, and retaliation.

Attach Drawing