

EMPORIA STATE UNIVERSITY

REQUEST FOR QUALIFICATIONS (RFQ)

RFQ Number: 24-01

Date Issued: April 18, 2024
Questions Deadline: May 1, 2024, 2:00 p.m. (CST)
Closing Date: May 9, 2024, 2:00 p.m. (CST)

Procurement Officer: Ashley Brandt
Mailing Address: Emporia State University Purchasing Office
1 Kellogg Circle, Box 4021, Plumb Hall 103M, Emporia, KS 66801
Telephone: 620-341-5137
E-Mail Address: purchaseorders@emporia.edu

Item: Campus Master Plan

Agency: Emporia State University (ESU)
Location(s): Emporia, KS 66801

Period of Contract: Contract Award through March 31, 2025.

Introduction: Emporia State University (ESU) is requesting submittals from qualified campus master planning firms to provide a Campus Master Plan for Emporia State University. The last Campus Master Plan was completed in 2014 with a minor update in 2019. The new document will need to provide direction, policy, and recommended action regarding future facility improvements for the upcoming 10-year period. This document provides the information necessary for interested consultants to submit their expressions of interest, qualifications, and relevant experience, and to understand the selection process.

Questions and requests for clarification of the RFQ must be submitted by email to purchaseorders@emporia.edu or via [Vendor Registry](#) by May 1, 2024, at 2:00 p.m. (CST). Impromptu questions may be permitted, and spontaneous unofficial answers provided. However, bidders should understand that the only official answer or position of Emporia State University will be in writing.

Failure to notify the ESU Purchasing Office of any conflicts or ambiguities in the RFQ may result in items being resolved in the best interest of the University. Any modification to this RFQ as a result of written answers to written questions, shall be made in writing by addendum. Only written communications are binding.

Answers to questions will be available in the form of an addendum on the ESU Purchasing website: <http://www.emporia.edu/busaff/purchasing/index.html>. It shall be the responsibility of all participating vendors to acquire any and all addenda and additional information as it is made available from the web site cited above. Vendors are required to check the website on a regular basis for any additional information, addenda, or instructions.

Failure to abide by all of the conditions of this Request for Qualifications (RFQ) may result in the rejection of a bid.

1. SCOPE OF WORK

A. CURRENT LAND USE

Create campus maps identifying current land use on the campus will be developed indicating the following:

1. Academic
2. Auxiliary (Residential Life, Recreation Center, and Memorial Union)
3. Athletic
4. Recreation
5. Support
6. Open Space / Green Space
7. Circulation
8. Quads
9. Utilities (placeholder for ESU GIS information)
10. Campus Properties and Boundaries
11. Foundation/Endowment Properties

B. SPACE USE ASSESSMENT

A written numerical program and graphic analysis shall be developed to quantify existing space used, and actual space necessary, for:

- Each academic program (noted on page 9)
- The Memorial Union (many university functions exist in this facility)

The numerical program will include outlooks of future space needs for each academic program across buildings and campus as a whole.

C. CREATION / EXPANSION / REDUCTION / ELIMINATION

Based on the information obtained from the space use assessment, campus meetings and committees, direction and expectations for growth and development of the University, campus maps will be developed indicating a strategic plan for growth or reduction in the following areas based on the potential of new departments being created, existing departments expanding or reducing in size:

1. Academics (all new academic structure)
2. Auxiliaries (Residential Life and Memorial Union)
3. Athletics (see existing recent Master Plan)
4. Recreation
5. Circulation and Parking

This work will include: the siting / place holding of any new buildings and/or additions, the recommended razing of any existing buildings; the alterations required for the support, utilities, open space, and circulation related to the proposed changes.

D. BUILDING & INFRASTRUCTURE ASSESSMENT

University buildings are currently audited and assessed using VFA facility assessment software. Facility condition data will be shared to use as part of space assessment and planning.

E. CIRCULATION AND PARKING

Based on the information, direction and expectations for growth and development of the University, campus maps will be developed indicating a strategic plan for growth or reduction in the following areas:

1. Vehicular Circulation
 - a. Licensed Vehicles (Cars, Trucks, Motorcycles, etc.)
 - b. Non-licensed Vehicles (Mopeds, Scooters, Motorbikes, etc.)
 - c. Person Powered Vehicles (Bicycles, Skates, In-Lines, etc.)
 - d. Transits (Buses, Delivery, Service, etc.)
2. Pedestrian Circulation
 - a. Sidewalks (exterior and interior)
 - b. Malls
 - c. Quads
3. Pathways (Walking, Jogging, Running, Skating, Biking, etc.)
4. Parking
 - a. Vehicular (Cars, Trucks, Motorcycles, Delivery, Service, etc.)
 - b. Regulations (Permit, Open, Guest, Conference, etc.)
 - c. Person Powered Vehicles (Bicycles, Tricycles, etc.)

F. CAMPUS STANDARDS

Based on the information, direction and expectations for growth and development of the University, campus standards will be developed and adopted indicating a strategic plan to follow, enforce and implement these standards for future growth, alteration, or reduction. Existing standards will be reviewed and assessed. New standards will be developed where no standards exist. Standards will be linked to the master plan document as separate appendices. Standards shall include the following areas:

1. Space Utilization (see existing space utilization guidelines)
2. Campus Brand and Image
 - a. Clear outlined procedures for implementing branding on campus in new and existing facilities (Marketing + Communication, Facilities + Vendor roles, responsibilities, and accountabilities)
 - b. Increased brand presence across campus both outside and inside facilities to further foster pride, school spirit and affinity for ESU as well as increase branding when outside guests are visiting ESU facilities.
3. Campus Entries (Vehicular and Pedestrian) and Edging
4. Signage (Interior, Exterior, Building, Wayfinding, Temporary, etc.)
5. Main Utilities (Data, Electrical, Water, Gas, Communication, Drainage, Waste, etc.)
6. Buildings (Vernacular, Emergency, Life Safety, MEP Standards, Architectural Standards, Accessibility, Historic Preservation, etc.)
7. Landscaping (Plantings, Elements, Irrigation, Signature Areas, etc.)
8. Paved Areas (Parking Lots, Side Walks, Streets, etc.)
9. Security and Exterior Lighting (Surveillance, Building, Parking, etc.)
10. Art and Displays
11. Technology

G. TOWN-GOWN RELATIONSHIP

Based on the information, direction and expectations for growth and development of the University, identify opportunities for joint City / University projects / developments, adjacent and / or remote to the University, as potential partnerships and incorporated in the master planning of the University.

2. DELIVERABLES

The successful consultant will be expected to deliver and provide the following documents and services:

- Current Land Use Plans
- Proposed Land Use Plans
- Space Use assessment and forecast of Academic space
- Circulation & Parking Studies and Plans
- Campus Standards
- University-Community Partnership Studies
- Format and Layouts will be approved by ESU

The consultant will provide presentation and final documentation based on the following guidelines:

- Electronic copy of the final Emporia State University Campus Master Plan. Format to be coordinated with the University.
- In coordination with Emporia State Media and Marketing, create an interactive web-based site for the University Web site. Publish and update the process, progress, and the final Emporia State University Campus Master Plan. Web site content will have University's oversight and approval prior to posting. Web site with Master plan will have links to appendices of campus standards and other Planning related pages.
- Fifty (50) copies of an executive summary full color brochure version of the final Emporia State University Campus Master Plan. This will also be available on the web site for printing.
- All presentation materials and methods (including but not limited to electronic, graphics, boards, video, photos, Revit, CAD 2-D & 3-D, models, virtual planning models, informational brochures, etc.) necessary for use and presentation to the University's Planning Committee, faculty/staff/student forums, open forums, community forums.

3. PLANNING TIMELINE AND TASKS

Emporia State University started in 1863 and continues to look forward to the direction and growth of the University from the present to 2040. We anticipate that this process will begin no later than May 2024 and will take nine months to complete. The consultant will be the lead in all tasks and activities and will be responsible for all scheduling and recordkeeping. The Director of Facility Planning will be contact person for the consultant.

The following is a list of tasks expected to be detailed in the final contract:

- Attend and lead the initial meeting with university representatives to review and refine the scope of work and schedule. Develop a routine schedule of meetings with the Planning Committee and the Director of Facility Planning.
- Review and collect all available data and develop new data relevant and necessary to the project.
- Meet with the Planning Committee at least once a month and additional times as needed. Based on the initial meeting, it may be necessary at the beginning of the project to have additional meetings.
- Schedule and meet with relevant stakeholders to obtain input, guidance and opinion related to the planning process and the direction and growth of the University.
- Conduct progress review meetings with the Director of Facility Planning and Steering Committee (in person, via telephone/video conferencing, etc.) as required.
- Schedule, post and conduct meetings with campus and community interest groups allowing diverse public participation throughout the process.
- Create and maintain an interactive web-based site on the University Web Page. Publish and update the meeting schedules, preliminary documents, process, progress, and the final Emporia State University Campus Master Plan. Web site content will have University's oversight and approval prior to posting.
- Develop and maintain an overall project schedule with specific benchmarks to measure progress and status.

- Develop and submit progress draft documents for review and approval by the Planning Committee at times noted on the overall project schedule.
- Develop and present the final draft document for presentation at public meetings to secure consensus for adoption of the final plan.
- Develop and submit the final draft document for review and approval by the Planning Committee.
- Prepare and present the final document and associated deliverables to the Planning Committee

The timeline for this planning process is as follows:

April 18, 2024	Request for Qualifications Issued
May 9, 2024	Submissions of Qualifications Received, Short List is Determined
May 24, 2024	Interviews and Selection, Negotiations
June 3, 2024	Initial Meeting
June 17, 2024	Start Planning Process Data Gathering and Development
November 4, 2024	First Draft Submission
January 20, 2025	Second Draft Submission
February 24, 2025	Final Submission
March 10, 2025	Deliverables due to University
March 31, 2025	Emporia State University Campus Master Plan Adoption

Please note that the University is not requesting or requiring future building concept plans but rather limit the master plan to siting / place holding of proposed new buildings or additions.

The final electronic submission and documents must be able to be updated on an annual basis.

4. CONSULTANT QUALIFICATIONS

Evaluation of firms and individuals will be based on the following minimum criteria:

- Letter of Interest (one page)
- Submission of the State of Kansas, Department of Administration, Office of Facilities and Property Management DDC FORM 050, DDC FORM 051, DDC FORM 052, DDC FORM 053 and DDC FORM 054.
- Minimum five years of experience of the firm or individual with University Master Planning.
- Minimum of five successfully adopted projects over the past 10 years with two in the past five years. And a list with contact information of those projects.
- Experience with Campus Master Planning related to four-year liberal arts universities with enrollments between 3,000 and 8,000 full time students.
- Proposed project management plan and precise role of each person involved with the project.
- Consultants to the firm or individual (these must be identified in the submission).
- Proximity and familiarity with the area of the project.
- Examples of preliminary, draft, illustrative, promotional, web site and final documents.
- Capability and examples of the firm and/or individual to perform the work on schedule and within the negotiated fees.
- Current and projected workload.
- References (minimum of 3).
- Professional licensing in the State of Kansas in the appropriate disciplines.
- Other unique or relevant experience or qualifications.
- Submission to be limited to forty (40) sheets or less.

Emporia State University reserves the right to accept or reject any or all Statements of Qualifications in whole or in part and to amend or supplement the RFQ. Emporia State University is under no obligation to use a firm for a particular project in the future and may select other firms to do future work.

The selection process will follow the procurement and selection procedures allowed under State Statute KSA 76-7,125.

Submissions for the RFQ must be submitted to [Vendor Registry](#) or emailed to purchaseorders@emporia.edu by 2:00 p.m. (CST) on May 9, 2024.

ADDITIONAL INFORMATION

Background Pertaining to Emporia State University:

Emporia State University was founded in 1863 upon passage of the enabling act to establish Kansas State Normal School. Although numerous changes in name, program and technology have ensued, the University's primary mission has not changed significantly in the intervening 160 years. It remains a comprehensive regional university with a wide variety of bachelor and master level programs in liberal arts, education, and business. ESU also offers a masters and a doctoral degree in Library and Information Management. ESU is located within the city limits of Emporia, which has a population of approximately 24,000 people. The population of the larger Lyon County area is approximately 39,000.

The University has a strong undergraduate emphasis upon the education of teachers, the liberal arts, and business. In the Fall of 2023, the University began operations under a new structure. The Division of Academic Affairs has been restructured and the schools and departments have been reorganized to become more adaptive for the future. ESU has a robust array of master's degree programs and a much higher proportion of its student population enrolled in graduate education than is typically found at comprehensive universities. An increasing percentage of ESU students, particularly at the graduate level, receive their instruction through online courses. This shift significantly impacts the need for on-campus facilities and the need for reliable and up to date technology. Both the Facilities Department and the I.T. Department are now coordinated through the Infrastructure Department to ensure that physical facilities and technologies are working in tandem to provide the most up to date and relevant spaces for a learning institution.

As of the fall 2022 semester ESU has an enrollment of 5,324 students, of which approximately 52 percent are undergraduates and 48 percent are graduates. Of the total enrollment, approximately 2,804 attend classes on the main-campus in Emporia, with the remaining, 2,520 enrolled in various off-campus programs, primarily online instruction. Among on-campus students, approximately 669 reside in residence halls located on the main campus. It is estimated an additional 2,100 students reside within the city limits of Emporia, in nearby apartments, houses, and fraternity or sorority residential living facilities.

Emporia State University has a full range of intercollegiate athletic programs for men and women, competing at the NCAA Division II level in the MIAA conference. In 2021 ESU Athletics opened the Kossover Family Tennis Complex, the first indoor tennis facility in the MIAA, with the help of donor funding. The Kossover complex, along with Emporia State's football, baseball, softball, and track facilities are prominently visible and accessible from Interstate 35. ESU athletic events experience one of the highest attendance rates in Division II. Additionally, the University's Recreation Center, also visible from Interstate 35, experiences a high degree of student involvement and visibility.

In addition to its mission of academics and service at the collegiate level, ESU has a long tradition of outreach to high school and middle school students. The University annually hosts approximately 10,000 elementary and secondary students at more than fifty (50) events throughout the year. 2021 saw the completion of the Prophet Aquatic Research and Outreach Facility overlooking King Lake at the north end of Campus. This building houses ESU biology labs as well as outreach classrooms and hosts camps and events throughout the year. Construction was recently completed on the new Cybersecurity outreach center which will provide hands-on experience for I.T. students as well as community outreach possibilities. Emporia State's Memorial Union is also a facility of considerable statewide utilization. The Memorial Union building has approximately 177,000 square feet of space and is the largest meeting space between Topeka and Wichita. The Memorial Union's first obligation is provision of service to students, staff, and faculty of the University. However, due to its size and location, it is the site of many conferences and community events.

Selected University demographics are as follows (Fall 2022):

Full-time faculty and administrative staff	314
Full-time employees and staff	747
Total student enrollment (Fall 2022)	5,324
Undergraduate students	2,741
Graduate students	2,583
Living in University residence halls	658

The University:

The main campus of ESU includes 240 acres of academic, housing, recreation, and athletic space. The main campus includes fifty-four (54) structures, representing 1,586,085 gross square feet. Approximately 1,000,999 sq. ft. (63 percent of the total) is in ten major academic buildings. The total square footage includes 306,653 sq. ft. of residence hall space. ESU has been divesting of other properties within the city of Emporia and working on consolidating existing building stock to enable the removal of several buildings in poor condition, reduce deferred maintenance backlogs, and improve overall space utilization of campus facilities.

Emporia State University land holdings also include a 200-acre farm near Americus, Kansas, which is considered a teaching laboratory for a variety of programs in the physical and biological sciences. Additionally, the University owns a 51-acre rock quarry area near Hamilton, Kansas, which has many fossils of considerable interest to the sciences and student learning and a 36-acre river bottom area near Reading, KS. All facilities were given to the University for educational purposes.

On-campus enrollment during Fall of 2022 was 2,804 students. The on-campus enrollment has declined during recent years, exacerbated by the COVID pandemic. The high point of on-campus enrollment, during the most recent 15 years, was 4,561 in the fall of 2009. Off campus enrollment was 2,520 in the Fall of 2022. This number has increased consistently during recent years. Off campus enrollment was 773 in the fall of 1998.

Residential Life facilities on campus currently include bed space for approximately 963. Of these spaces 100 are in recently renovated Morse Abigail Hall, 351 are in the Towers Complex, and 188 are in Singular/Trusler. Schallenkamp Hall opened to students in Fall of 2020 with 324 beds in suite layouts.

Singular/Trusler underwent a major renovation in 2013-2014. The remainder of the Morse complex has been vacated by Residential Life with one section razed in 2019, a second in 2023 and the remaining two buildings in 2026. This demolition will make way for a new Nursing and Student Wellness building in the center of campus.

History of Growth – The Past to The Present

The growth of Emporia State University can generally be described as slow and steady for the first 80 years of existence. The years between World War II and the Vietnam War showed times of rapid growth during and immediately after the wars. The past 40 years have seen limited building on campus, with a few new buildings in the last 5 years, and relatively even enrollment. A series of campus maps showing the campus growth from the beginning to the present offer a historical basis in the direction the University will decide to pursue.

ACADEMIC PROGRAMS

Six Schools:

- School of Business and Technology
- School of Humanities and Social Sciences
- School of Visual and Performing Arts
- School of Applied Health Sciences
- School of Library and Information Management (*space programming not required*)
- School of Science and Mathematics (*space programming not required*)

One College: The Teachers College

One Institute: The Institute of Interdisciplinary Studies

With this new structure, existing departments have moved into new collaborations as well as new directives and goals within each unit. It is important that existing space use and future space use be reviewed by means of a programming statement.

CERTIFICATION OF COMPANY NOT CURRENTLY ENGAGED IN THE PROCUREMENT OR OBTAINMENT OF CERTAIN EQUIPMENT, SERVICES, OR SYSTEMS

WHEREAS, pursuant to Public Law 115-232, Section 889 of the John S. McCain National Defense Authorization Act of 2019, “covered telecommunications equipment or services” is defined as:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

WHEREAS, a “covered foreign country” means any of the following: (1) The People’s Republic of China, (2) The Russian Federation, or (3) any country that is a state sponsor of terrorism¹

WHEREAS, foreign adversaries are increasingly creating and exploiting vulnerabilities in covered telecommunications equipment which store and communicate vast amounts of sensitive information and support infrastructure and emergency services, in order to commit malicious cyber-enabled actions;

WHEREAS, the unrestricted acquisition or use in the State of Kansas of covered telecommunications equipment designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in technological equipment, services, or systems; and

WHEREAS, the State of Kansas has an interest in protecting itself against threats related to foreign adversary’s exploitation of vulnerabilities in covered telecommunications equipment.

THEREFORE, Contractor certifies that it shall not provide or procure to the State of Kansas or any agency thereof any covered telecommunications equipment either in whole or in part of any product or during the commission of any service.

FURTHERMORE, and notwithstanding any other contracts or agreements with Contractor, if Contractor has violated, misrepresented, or otherwise fails to comply with this certification document as determined by the State, the State may terminate any contract without penalty with Contractor immediately.

By signing below, Contractor acknowledges and agrees to comply with the provisions of this policy.

CONTRACTOR

Signature, Title Date

¹ Designations of a “state sponsor of terrorism” may be found at the U.S. Department of State website. <https://www.state.gov/state-sponsors-of-terrorism/#:~:text=Currently%20there%20are%20four%20countries,%2C%20Iran%2C%20and%20Syria.&text=For%20more%20details%20about%20State,in%20Country%20Reports%20on%20Terrorism>

State of Kansas
 Emporia State University
 ESU-146a (Rev. 12-23)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: Paragraphs 1-14 of this form contain statutorily mandated 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 ESU-146a, Rev. 12-23), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that partial or full performance of an agreement with these provisions attached constitutes acceptance of these terms as part of the agreement.

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 Emporia 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 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 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.

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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.

INFORMATION TECHNOLOGY RELATED PROVISIONS

15. **Digital Accessibility Provision:** Emporia State University affords equal opportunity to individuals in its employment, services, programs, and activities in accordance with federal and state laws. This includes effective communication and access to electronic and information communication technology resources for individuals with disabilities. Contractor shall: (1) deliver all applicable services and products in reasonable compliance with applicable university standards (for example, Web Content Accessibility Guidelines 2.X, Level AA or Section 508 Standards for Electronic and Information Technology as applicable); (2) upon request, provide the university with its accessibility testing results and written documentation verifying accessibility; (3) promptly respond to and resolve accessibility complaints; and (4) indemnify and hold the university harmless in the event of claims arising from inaccessibility.

16. **Information Security Provision:** Contractor agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act ("FERPA"), Gramm-Leach-Bliley Act ("GLBA") and the Health Insurance Portability and Accountability Act ("HIPAA"), together hereinafter the "Acts", and guarantees that all information covered by the Acts and provided to Contractor by the University ("University Information") will be used only in conjunction with the product or service being provided, that it will not be used for any other purpose, or be released by Contractor or copied in any manner for any other use and will be promptly returned or destroyed upon termination of agreement. Contractor shall use commercially reasonable efforts to notify all of its foreseeable agents, employees, subcontractors and assigns who will come into contact with University Information that they shall comply with, and are subject to the confidentiality requirements set forth in the Acts and shall provide each with a written explanation of the Acts' requirements for confidentiality before they are permitted to access the University Information.

Contractor shall meet NIST SP 800.x. Contractor shall provide and maintain a secure environment that ensures confidentiality of all University Information, wherever located. No University Information shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by an Agreement and as approved by the University. Contractor agrees to notify the University, within seventy-two (72) hours of any security breach that could result in the unauthorized disclosure of University Information. University Information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in an Agreement and approved by the University. Disclosure of University Information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

Contractor agrees, upon termination, cancellation, expiration, or other conclusion of this Agreement, within 30 days to return to the Institution or if return is not feasible, destroy and not retain any copies (and furnish the Institution with an appropriate Certificate of Destruction) of any and all Confidential Information that is in its possession.

17. **Ownership of Data:** All data and/or content collected, created, or prepared by the University and provided to Contractor in the performance of its obligations under the Agreement shall be the exclusive property of the University. Contractor shall not use, willingly allow or cause to have such data used for any purpose other than the performance of University's obligations under the Agreement without the prior written consent of the University. This provision shall survive the termination of any agreement.

18. **Data Security and Control:** Contractor attests that it has implemented administrative, physical, and technical safeguards for its data security that at a minimum meet industry best practice. Contractor shall ensure that all such safeguards, including the manner in which data is collected, accessed, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor further attests that all University data shall be stored in the United States.

Contractor shall timely notify University of any data breach whether or not it is University data, including a data breach involving any of Contractor third-party service providers that process, store or transmit data.

Contractor will provide assessment, audit, examination, or review of all controls in Contractor's physical and/or technical environment in relation to all data being handled and/or services being provided to University pursuant to this Agreement. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transmits data pursuant to this Agreement.

If at any time, University wants to change or remove data and/or content, University shall notify Contractor. Contractor will use its best efforts to immediately respond to the request and at a minimum change or remove data and/or content.

1. **General Data Privacy Regulation (GDPR):** Emporia State University is subject to the European Union's General Data Privacy Regulation [Regulation (EU) 2016/679] (the "GDPR") when the University is a "controller" or "processor" of "personal data" from an individual "data subject" located in the European Union, as those terms are defined in the GDPR. Contractor acknowledges and agrees that it is acting as a "processor" of "personal data" for the University under this Agreement and that all applicable requirements of the GDPR are incorporated by reference as material terms of this Agreement. Contractor represents and warrants that (1) it is aware of and understands its compliance obligations as a "processor" under GDPR; (2) it has adopted a GDPR compliance policy/program, a copy of which has been provided to the University; (3) it will process "personal data" only in accordance with the University's instructions; and (4) with regard to its obligations under this Agreement, it shall comply with all applicable requirements of the GDPR to the same extent as required for the University. Additionally, the Contractor shall indemnify and hold the University, its trustees, officers, and employees harmless from and against any claims, demands, suits, damages, penalties, fines, or costs arising from any violation of GDPR by the Contractor.