**ATTACHMENT B**

**KCATA SAMPLE CONTRACT/TERMS AND CONDITIONS**

 **THIS CONTRACT (**the “Contract”), made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2025, by and between the **Kansas City Area Transportation Authority (“KCATA”)**, a body corporate and politic, and a political subdivision of the States of Missouri and Kansas, with offices at 1350 East 17th Street, Kansas City, Missouri, 64108 and \_\_\_\_\_\_\_\_\_\_\_\_\_**(“Contractor”)**, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 **NOW, THEREFORE,** in consideration of the covenants and conditions to be performed by the respective parties hereto and of the compensation to be paid as hereinafter specified, the KCATA and the Contractor agree as follows:

1. **EMPLOYMENT OF CONTRACTOR.**

 This Contract is entered into for the purpose of engaging the Contractor as an independent contractor by KCATA in accordance with that certain bid submitted by the Contractor dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a copy of which is attached hereto as Appendix C and incorporated herein by reference (“Proposal”).

1. **SCOPE OF CONTRACT**.

 The Contractor shall provide the services and deliverables consistent with the Request for Proposals (RFP) solicited by the KCATA, dated January 21, 2025, entitled “Kansas City Area Transportation Authority (KCATA) Drug & Alcohol Testing and Medical Health Services” (sometimes referred to as the “Project” or the “Work”), which is incorporated herein as Appendix B. The Contractor hereby agrees to provide the project management consulting services and deliverables as needed at the prices stated in Cost/Price Proposal attached hereto as Appendix D for the KCATA in accordance with the specifications of the scope of contract provided in the Contract Documents herein.

1. **TERM.**

 The term of this contract agreement shall be for a period of two (2) years beginning \_\_\_\_\_\_\_\_\_\_\_\_, 2025 and expiring on \_\_\_\_\_\_\_\_\_\_\_\_, 2025, and includes three (3) option. The services to be performed and deliverables to be provided shall commence upon receipt of a notice to proceed from the KCATA. Work in process prior to expiration of the contact agreement shall be completed and as construed by KCATA to be within the “contract term.”

1. **CONTRACT SUM.**

 The KCATA shall pay the Contractor in current funds for the performance of the services and required deliverables (Appendix B to this Contract), subject to (a) the terms and conditions of the Contract and (b) any KCATA authorized additions or deductions by “Change Order,” if applicable, as provided in this Contract. The contractor shall be paid for the work performed at the rates set out in the Contractor’s Cost/Price Proposal (Appendix D). It is anticipated that the funds to be paid the Contractor under this contract shall not exceed the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars and \_\_\_\_ Cents ($\_\_\_\_\_\_\_\_\_\_).

 Annual funding for extension options, if exercised, will be based on KCATA’s anticipated needs and in accordance with the rates established herein.

1. **ORDER OF PRECEDENCE**

In the event of any inconsistency between the articles, attachments, scope of services, or provisions which constitute this Contract, the following order of precedence shall apply:

A. Specific written amendments or modifications/change orders to the executed Contract;

B. KCATA’s Standard Terms and Conditions;

C. Executed Contract and any attachments incorporated by reference

D. Contractor’s Price Proposal; and

E. KCATA’s RFP and Scope of Services, including any attachments incorporated by reference.

1. **MISCELLANEOUS PROVISIONS.**

 The following Appendices are attached hereto by reference as part of this Contract. This Contract and any amendments issued hereafter, constitute the entire Contract between the KCATA and the Contractor.

 Appendix A. KCATA Contract Terms and Conditions; and
Appendix B. Scope of Services from KCATA’s RFP; and
Appendix C. Contractor’s Proposal; and

 Appendix D. Price Proposal Submitted by Contractor dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 **IN WITNESS WHEREOF**, the parties hereto for themselves, their successors, and permitted assigns, executed this Contract Agreement as of the day and year first above written.

**CONTRACTOR’S NAME KANSAS CITY AREA TRANSPORTATION**

**(CONTRACTOR) AUTHORITY (KCATA)**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name of Authorized Signer Michael Leone

Title of Authorized Signer Chief Financial Officers

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Charles Ferguson

 Chief Operating Officer

**SAMPLE CONTRACT TERMS AND CONDITIONS**

**1.** **ACCEPTANCE OF SERVICES/DELIVERABLES – NO RELEASE**

Acceptance of any portion of the services and/or deliverables prior to final acceptance shall not release the Contractor from liability for faulty workmanship, or for failure to fully comply with all of the terms of this Contract. KCATA reserves the right and shall be at liberty to inspect all work products at any time during the Contract term, and shall have the right to reject all services or deliverables which do not conform with the conditions, Contract requirements or specifications; provided, however, that KCATA is under no duty to make such inspection, and Contractor shall (notwithstanding any such inspection) have a continuing obligation to furnish all services and deliverables in accordance with the instructions, Contract requirements and specifications. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor, unless loss results from negligence of KCATA.

**2. AGREEMENT IN ENTIRETY**

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

**3. ASSIGNMENT**

The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of KCATA. In the event of KCATA’s consent to assignment of this Contract, all the terms, provisions and conditions of the Contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representative.

**4. BANKRUPTCY**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the KCATA official identified in the “Notification and Communication” section. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of KCATA Contract numbers against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

**5. BREACH OF CONTRACT; REMEDIES**

* 1. If the Contractor shall fail, refuse or neglect to comply with any terms of this Contract, such failure shall be deemed a total breach of contract and the Contractor shall be subject to legal recourse by KCATA, plus costs resulting from failure to comply including the KCATA’s reasonable attorney fees, whether or not suit be commenced.
	2. The duties and obligations imposed by this Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law or equity. No action or failure to act by KCATA shall constitute a waiver of any right or duty afforded under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

**6. CHANGES**

KCATA may at any time, by a written order, and without notice to the Contractor, make changes within the general scope of this Contract. No such changes shall be made by the Contractor without prior written approval by KCATA. If any such change causes an increase or decrease in the Contract sum, or the time required for performance of this Contract, whether changed or not changed by such order, an equitable adjustment shall be made by written modification. Any Contractor’s claim for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change. Nothing in this clause shall excuse the Contractor from proceeding with this Contract as changed.

**7. CIVIL RIGHTS**

1. **Nondiscrimination**.  In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S. C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, age, sex, sexual orientation, gender identity, national origin or disability.  In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing regulations that the Federal Transit Administration (FTA) may issue.
2. **Equal Employment Opportunity.**  The following equal employment opportunity requirements apply to this Contract:

1.   Race, Color, Creed, National Origin or Sex.  In accordance with Title VII of the Civil Rights Act, as amended, 42. U.S.C. §2000e, *et seq*., and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract.  The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, age, sex, sexual orientation, gender identity or national origin.  Such action shall include, but not be limited to, the following:  employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.  In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2.    Age.  In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S.EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq*., and U. S. Department of Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F. R. part 90, and Federal transit law at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3.  Disabilities.  In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12102 *et seq.,* the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et eq.,* and the Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability.  In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. **ADA Access Requirements.** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37; and U.S. Department of Transportation regulations, “Americans with Disabilities Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

D. Contractor understands that it is required to include this Article in all subcontracts.  Failure by the Contractor to carry out these requirements or to include these requirements in any subcontract is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the KCATA deems appropriate, including but not limited to withholding monthly progress payments and/or disqualifying the Contractor from future bidding as non-responsible.

**8. CONFLICTS OF INTEREST (ORGANIZATIONAL)**

In accordance with 2 C.F.R. § 200.112, the Contractor certifies that it has no other activities or relationships that would make the Contractor unable, or potentially unable, to render impartial assistance or advice to KCATA, or that would impair the Contractor’s objectivity in performing work under this Contract, or that would result in an unfair competitive advantage to Contractor or to another third party performing the Project work.

**9. CONTINUITY OF SERVICES**

The Contractor recognizes that the services under this Contract are vital to the KCATA and must be continued without interruption and that, upon contract expiration, a successor, either the KCATA or another contractor may continue them. The Contractor agrees to (1) furnish phase in-training and (2) exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.

**10. CONTRACTOR’S PERSONNEL**

All services required hereunder shall be performed by the Contractor or under its supervision and all personnel engaged in the services shall be fully qualified and authorized under state and local law to perform such services. Any change in the key personnel, as described in the contractor’s proposal, shall be subject to the written approval of KCATA; such approval shall not be unreasonably withheld. The parties agree that at all times during the entire term of this Contract that the persons listed in Contractor’s proposal shall serve as the primary staff person(s) of Contractor to undertake, render and oversee all of the services of this Contract subject to KCATA’s right to remove personnel. KCATA reserves the right to require the Contractor to remove any personnel and or subcontractors for any cause provided such request for removal shall be documented in writing to Consultant.

**11. CONTRACTOR’S RESPONSIBILITY**

No advantage shall be taken by the Contractor or its subcontractor of the omission of any part or detail which goes to make the equipment complete and operable for use by KCATA. In case of any variance, this specification shall take precedence over Contractor's or subcontractor's own specifications. The Contractor shall assume responsibility for all materials and services used whether the same is manufactured by the Contractor or purchased ready made from a source outside the Contractor's company.

**12. DISPUTE RESOLUTION**

* + 1. Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by KCATA's Director of Procurement, who shall reduce the decision to writing and mail or otherwise furnish a copy to the Contractor. The decision of the Director of Procurement shall be final and conclusive unless within ten (10) days from the date of receipt of such copy the Contractor mails or otherwise furnishes a written appeal addressed to the Chief Financial Officer, with a copy to the Director of Procurement. The determination of such appeal by the Chief Financial Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, arbitrary, or not supported by substantial evidence. In connection with any appeal proceeding under this clause the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, and unless otherwise directed in writing by KCATA, the Contractor shall proceed diligently with performance in accordance with the Director of Procurement’s decision.
		2. The duties and obligations imposed by the Contract and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the KCATA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**13. DIVERSE BUSINESS ENTERPRISE REQUIREMENTS**

* + - 1. It is the policy of KCATA that Disadvantaged (DBE), Small (SBE), Minority-Owned (MBE), Woman-Owned (WBE), and Small Local (SLBE) Business Enterprises, shall have an equal opportunity to participate in KCATA contracts. It is also the policy of KCATA to:

1. Ensure nondiscrimination in the award and administration of contracts;

2. Create a level playing field on which diverse firms can compete fairly for

 contracts;

3. Ensure that KCATA’s diversity programs are narrowly tailored in accordance with applicable law;

4. Help remove barriers to the participation of diverse firms in contracts;

5. To promote the use of diverse firms in all types of contracts and procurement activities; and

6. Assist in the development of firms that can compete successfully in the marketplace outside the diversity program.

* 1. KCATA’s diversity programs are based on the requirements of Title 49, Code of Federal Regulations, Part 26, and this Contract is subject to those regulations. Under this contract, Federally funded projects shall abide by DBE or SBE requirements as applicable. Projects that are funded by state or local entities will be subject to MBE, WBE, or SLBE requirements.
	2. For this contract, there is no diversity commitment established.

D. The Contractor shall not discriminate on the basis of race, color, national origin or sexual orientation, or gender identity in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR. Part 26 in the award and administration of this contract. Failure by the Contractor 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 KCATA deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).

E. The Contractor may not substitute, remove, or terminate a diverse subcontractor without KCATA’s prior written consent. Written consent of termination may only be given if the Contractor has demonstrated good cause. Before submitting its request to terminate or substitute a diverse subcontractor, the Prime Contractor must give notice in writing to the diverse subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the diverse subcontractor five days to respond to the Contractor’s notice and advise KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the Contractor’s action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

 1. Good Cause. Good cause includes the following circumstances:

The listed diverse subcontractor fails or refuses to execute a written contract; or

1. The listed diverse subcontractor fails or refuses to perform the work to its normal industry standards. Provided, however, that the good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor; or
2. The listed diverse subcontractor fails or refuses to meet the Prime Contractor’s reasonable, nondiscriminatory bond requirements; or
3. The listed diverse subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness; or
4. The listed diverse subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law; or
5. The diverse subcontractor is not a responsible contractor; or
6. The listed diverse subcontractor voluntarily withdraws from the project and provides the Prime Contractor written notice of its withdrawal;
7. The listed DBE is ineligible to receive diverse credit for the type of work required;
8. A diverse owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
9. Other documented good cause that compels KCATA to terminate the diverse subcontractor. Provided the good cause does not exist if the Prime contractor seeks to terminate a diverse firm it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the diverse contractor was engaged or so that the Prime Contractor can substitute another diverse or non-diverse contractor.

2. Before submitting its request to terminate or substitute a diverse subcontractor, the Prime Contractor must give notice in writing to the diverse subcontractor, with a copy to KCATA, of its intent to request to terminate and/or substitute, and the reason for the request. The Prime Contractor must give the diverse firm five days to respond to the Prime Contractor’s notice and advise the KCATA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why KCATA should not approve the Prime Contractor’s action. If required in a particular case as a matter of public necessity (e.g., safety), the response period may be shortened.

**14. EMPLOYEE ELIGIBILITY VERIFICATION**

A. To comply with Section 285.500 RSMo, *et seq*., the Contractor is required by sworn affidavit and provision of documentation, to affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Contractor shall also affirm that it does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). The Contractor is required to obtain the same affirmation from all subcontractors at all tiers with contracts exceeding $5,000.

1. A federal work authorization program is any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and control Act of 1986 (IRCA), P.L.99-603.

**15. FORCE MAJEURE**

A. Both Parties shall be excused from performing its obligations under this Contract during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control (**“Excusable Delays”**) including, but not limited to:  any incidence of fire, flood; acts of God or the public enemy; commandeering of material, products, plants or facilities by the federal, state or local government; pandemic; national fuel shortage; acts of war; terrorism; strikes; any acts, restrictions, regulations, by-laws; prohibitions or measures of any kind on the part of any KCATA; freight embargoes; delays of Contractor’s suppliers for like causes; contractual acts of either Party or a material act of omission by either Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Contractor or KCATA.  Contractor and KCATA shall use its best efforts to remove the cause of delay and resume work as soon as possible.

B. If at any time, Contractor concludes that any of the Work hereunder will become subject to a delay beyond Contractor’s control, including but not limited to any of the aforementioned causes, Contractor shall notify KCATA of the nature and detailed reasons and foreseeable extent of such delay and shall, once every seven (7) calendar days thereafter, notify KCATA whenever, to the best of Contractor’s knowledge and belief, the nature or foreseeable extent of such delay shall change.  Contractor shall provide this written notice within five (5) business days of Contractor’s becoming aware of the facts or matters giving rise to such Excusable Delay.  Both Parties shall keep in contact with each other as to the status of such Excusable Delay and shall agree in writing to a restart date when the facts or matters giving rise to such Excusable Delay have concluded and further delays are not foreseen.  Upon reengagement of work, Contractor and KCATA will formulate and agree upon an update project schedule, taking into account the timeframe that has passed since the work stoppage, necessary time to resume or re-create any previously completed tasks due to damaged or missing equipment and any associated time periods for shipment and/or manufacture of equipment.

**16. GENERAL PROVISIONS**

* + - 1. **No Third-Party Beneficiaries**. The parties do not intend to confer any benefit hereunder on any person, firm or entity other than the parties hereto.
			2. **Extensions of Time**. No extension of time for performance of any Contractor obligations or acts shall be deemed an extension of time for performance of any other obligations or acts.
			3. **Time of Essence.** Time is of the essence in Contractor’s performance of this Agreement.
1. **Time Periods**. A “business day” is a business working day of KCATA administrative personnel which are days other than a Saturday, Sunday or legal holidays observed by the KCATA for administrative personnel. If the time period by which any right or election provided under this Contract must be exercised, or by which any act required hereunder must be performed, expires on a day which is not a business day, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

E. **Binding Effect**. This Contract shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the parties.

F. **Counterparts**. This Contract may be executed at different times and in two or more counterparts and all counterparts so executed shall for all purposes constitute one contract, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterpart. And, in proving this Contract, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.

G. **Interpretation; Update of Citations**. Unless otherwise specified herein, (a) the singular includes the plural and the plural the singular; (b) words importing any gender include the other genders; and (c) references to persons or parties include their permitted successors and assigns. The parties recognize and agree that many of the laws, regulations, policies, procedures, and directives stated as governing the Contractor’s performance of its work or services, or the supplying of products, equipment, or materials, pursuant to this Contract are subject to updating, amendment or replacement. Therefore, all such references in this Contract are agreed by the parties to be deemed to refer to the then current updated, amended or replacement form of such laws, regulations, policies, procedures, and directives in effect at the applicable time during the term of this Contract and the same are hereby incorporated into this Contract by this reference.

H. **When Effective**. Notwithstanding any provision contained in this Contract to the contrary, this Contract shall become effective only after the execution and delivery of this Contract by each of the parties hereto and no course of conduct, oral contract or written memoranda shall bind the parties hereto with respect to the subject matter hereof except this Contract.

I. **Further Actions; Reasonableness and Cooperation by Parties; Time for Certain Actions**. Each party agrees to take such further actions and to execute such additional documents or instruments as may be reasonably requested by the other party to carry out the purpose and intent of this Contract. Except where expressly stated to be in a party’s sole discretion, or where it is stated that a party has the ability to act in its sole judgment or for its own uses or purposes, wherever it is provided or contemplated in this Contract that a party must give its consent or approval to actions or inactions by the other party or a third party in connection with the transactions contemplated hereby, such consent or approval will not be unreasonably withheld or delayed. If no time period is set hereunder for a party to approve or consent to an action or inaction by the other party or a third party such approval shall be given or affirmatively withheld in writing within ten (10) business days after it is requested in writing, or it shall be deemed given.

J. **Survival.** In addition to any provisions expressly stated to survive termination of this Contract, all provisions which by their terms provide for or contemplate obligations or duties of a party which are to extend beyond such termination (and the corresponding rights of the other party to enforce or receive the benefit thereof) shall survive such termination.

K. **Authority of Signatories.** Any person executing this Contract in a representative capacity represents and warrants that such person has the authority to do so and, upon request, will furnish proof of such authority in customary form.

L. **Notice of Legal Matters.** If this project is federally funded and is expected to equal or exceed $25,000, KCATA agrees to notify the FTA Chief Counsel or FTA Regional VII legal counsel of a current or prospective legal matter that may affect the Federal government. Contractor agrees this affirmative notification provision will apply to subcontractors and suppliers and is to be included in all agreements at all tiers. Failure to include this notice may be deemed a material breach of contract.

**17. GOVERNING LAW; CHOICE OF JUDICIAL FORUM**

This Contract shall be deemed to have been made in, and be construed in accordance with, the laws of the State of Missouri. Any action of law, suit in equity, or other judicial proceeding to enforce or construe this Contract, respecting its alleged breach, shall be instituted only in the Circuit Court of Jackson County, Missouri.

**18. HEADINGS**

The headings included in this Contract are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of intent of any provision, and shall not be construed to affect, in any manner, the terms and provisions hereof of the interpretation or construction thereof.

**19. INDEPENDENT CONTRACTOR**

1. The parties agree that the Contractor is an independent contractor under this Contract. Under no circumstance shall the Contractor be considered an agent, employee, or representative of KCATA and KCATA shall not be liable for any claims, losses, damages, or liabilities of any kind resulting from any action taken or failed to be taken by the Contractor.
2. The Contractor shall furnish adequate supervision, labor, materials, supplies, security, financial resources, and equipment necessary to perform all the services contemplated under this Contract in an orderly, timely, and efficient manner.

**20. INSPECTION OF SERVICES**

1. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the services provided in the performance of the Contract. “Services” as used in this clause, includes services performed, quality of the work, and materials furnished or used in the performance of services.

1. The Contractor shall provide and maintain an inspection system acceptable to the Authority covering the project. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Authority during contract performance and for as long afterwards as the Contract requires.
2. The Authority has the right to inspect and test all services called for by this Contract to the extent practicable at all times and places during the term of the Contract. The Authority shall perform inspection and tests in a manner that will not unduly delay the work.
3. If any of the services performed do not conform to Contract requirements, the Authority may require the contractor to perform the services again in conformity with Contract requirements for no additional fee. When the defects in performance cannot be corrected by re-performance, the Authority may:
4. Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; or
5. Reduce the Contract Sum accordingly.
6. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Authority may:
7. By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Authority that is directly related to the performance of the work; or
8. Terminate the Contract for default.

**21. INSURANCE**

1. The insurance required in this Contract shall be written for not less than any limits of liability required by law or by those set forth below, whichever is greater, and shall include blanket contractual liability insurance as applicable to the Contractor’s obligations under the Liability and Indemnification section below. All policies, except Professional Liability policies, shall name KCATA, its commissioners, officers, and employees as additional insureds. The insurance should be written with companies acceptable to KCATA and the companies should have a minimum A.M. Best’s insurance rating of A-(VIII). An exception to the minimum A.M. Best rating is granted for Workers Compensation exposures insured through the Builders’ Association of Self Insurance Fund (BASIF).
2. The Contractor shall be required to furnish to KCATA certificates verifying the required insurance and relevant additional insured endorsements prior to execution of the Contract, and thereafter furnish the certificates on an annual basis. The certificates (with the exception of Professional Liability and Workers Compensation coverage) shall specifically state that:
3. Contractual liability coverage is applicable; and
4. The Kansas City Area Transportation Authority, its commissioners, officers, and employees are named as Additional Insureds on the policies covered by the certificate; using this specific wording: ***Kansas City Area Transportation Authority, its commissioners, officers, and employees are named as additional insureds as respects general liability and where required by written contract. Any coverage afforded the certificate holder as an additional insured shall apply as primary and not excess or contributing to any insurance or self-insurance in the name of the certificate holder and shall include a waiver of subrogation.***
5. Further, from time to time and whenever reasonably requested by KCATA, the Contractor shall represent and warrant to KCATA (1) the extent to which the insurance limits identified below have been, or may be, eroded due to paid or pending claims under the policies; and (2) the identity of other entities or individuals covered as an additional insured on the policies. Further, the Contractor shall confirm that the insurers’ obligation to pay defense costs under the policies is in addition to, and not part of the liability limits stated in the policies.
6. All such insurance, with the exception of Professional Liability coverage, shall contain endorsements that the policies may not be canceled or amended or allowed to lapse by the insurers with respect to KCATA its commissioners, officers and employers by the insurance company without thirty (30) days prior notice to KCATA in addition to the Named Insured (s) and that denial of coverage or voiding of the policy for failure of Contractor to comply with its terms shall not affect the interest of KCATA, its commissioners, officers and employees thereunder.
7. The requirements for insurance coverage are separate and independent of any other provision hereunder.
8. **Worker’s Compensation**:
	1. State: Missouri and/or Kansas – Statutory
	2. Employer’s Liability: Bodily Injury by Accident -- $500,000 Each Accident

 Bodily Injury by Disease -- $500,000 Each Employee

 Bodily Injury by Disease -- $500,000 Policy Limit

 The Contractor and any subcontractor shall maintain adequate workers’ compensation insurance as required by law to cover all employees during performance of services, or during delivery, installation, assembly, or related services in conjunction with this Agreement.

1. **Commercial General Liability**:

 Bodily Injury and Property Damage to include Products and Completed Operations:

 $1,000,000 Each Occurrence

 $2,000,000 General Aggregate (per project)

 $1,000,000 Personal and Advertising Injury

 $50,000 Fire Damage

 $5,000 Medical Expenses

 2 Years (Completed Operations)

Contractor shall procure and maintain at all times during the term of the KCATA purchase order or the Contract commercial general liability insurance for liability arising out of the operations of the Contractor and any subcontractors. The policy(ies) shall include coverage for the Contractor’s and subcontractors’ products and completed operations for at least two (2) years following project completion, or as otherwise noted. The policy(ies) shall name as an additional insured, in connection with Contractor's activities, the KCATA, its commissioners, officers, and employees. The Contractor shall be responsible for all premiums associated with the requested policy(ies) and endorsements. The Insurer(s) shall agree that its policy(ies) is primary insurance and that it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance or self-insurance KCATA may have.

1. A**uto Liability**:

 Bodily Injury and Property Damage: $1,000,000 Combined Single Limit

The policy(ies) shall include automobile liability coverage for all vehicles, licensed or unlicensed, on or off the KCATA premises, whether the vehicles are owned, hired or non-owned, covering use by or on behalf of the Contractor and any subcontractors during the performance of work under this Contract.

1. **Professional Liability Insurance**

 Professional Liability Limit: $1,000,000 Each Claim

 $1,000,000 Annual Aggregate

The Contractor shall obtain professional liability insurance covering any damages caused by an error, omission or any negligent acts of the Contractor or its employees with regard to performance under this Agreement.

1. **Umbrella or Excess Liability**

 Umbrella or Excess Liability Limit: $1,000,000 Each Occurrence

 $1,000,000 Aggregate (per project)

**Where applicable,** the Contractor shall obtain and keep in effect during the term of the contract, Umbrella or Excess Liability Insurance covering their liability over the limit for primary general liability, automobile liability, and employer’s liability.

6. **Cyber Security**  $3,000,000 Each Occurrence

**22. LIABILITY AND INDEMNIFICATION**

1. **Contractor’s Liability.** Contractor shall be liable for all damages to persons (including employees of Contractor) or property of any type that may occur as a result of any act or omission by Contractor, any subcontractors, or sub-subcontractor, their respective agents or anyone directly employed by any of them or anyone.
2. **Subrogation.** Contractor, its agents, and any subcontractor hereby waive and relinquish any right of subrogation or claim against KCATA, its commissioners, senior leaders and employees arising out of the use of KCATA’s premises (including any equipment) by any party in performance of this Agreement.
3. **Indemnification.**
4. To the fullest extent permitted by law, Contractor agrees to and shall indemnify, defend and hold harmless KCATA, its Commissioners, officers and employees from and against any and all claims, losses, damages, causes of action, suits, liens and liability of every kind, (including all expenses of litigation, expert witness fees, court costs and attorney’s fees whether or not suit be commenced) by or to any person or entity (collectively the “Liabilities”) arising out of, caused by, or resulting from the acts or omissions of Contractor, subcontractors, or sub-subcontractors, their respective agents or anyone directly or indirectly employed by any of them in performing work under this Contract, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, so long as such Liabilities are not caused by the sole negligence or willful misconduct of a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Contractor shall also indemnify, hold harmless and defend the KCATA for any contractor or subcontractor action, tort, or violation of federal or state law or city ordinance.
5. In claims against any person or entity indemnified under this section, by an employee or Contractor, or anyone directly or indirectly employed by any of them, the subcontractor or sub-subcontractor indemnification obligation shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, subcontractor, or sub-subcontractor under worker’s compensation acts, disability benefit acts or other employee benefit acts. If any action at law or suit in equity is instituted by any third party against Contractor arising out of or resulting from the acts of Contractor in performing work under this Contract, Contractor shall promptly notify KCATA of such suit.
6. If any action at law or suit in equity is instituted by any third party against KCATA or its commissioners, officers or employees arising out of or resulting from the acts of Contractor, a subcontractor or sub-subcontractor, their respective agents or anyone directly or indirectly employed by any of them in providing products, equipment or materials, or in performing work or services under this Contract, and if Contractor has failed to provide insurance coverage to KCATA against such action as required herein or otherwise refuses to defend such action, KCATA shall have the right to conduct and control, through counsel of its choosing, the defense of any third party claim, action or suit, and may compromise or settle the same, provided that KCATA shall give the Contractor advance notice of any proposed compromise or settlement. Under these circumstances, KCATA retains the right to recover all costs of defense from the Contractor.
7. KCATA shall permit Contractor to participate in the defense of any such action or suit through counsel chosen by the Contractor, provided that all fees and expenses of such counsel shall be borne by Contractor. If KCATA permits Contractor to undertake, conduct and control the conduct and settlement of such action or suit, Contractor shall not consent to any settlement that does not include as an unconditional term thereof the giving of a complete release from liability with respect to such action or suit to KCATA. Contractor shall promptly reimburse KCATA for the full amount of any damages, including fees and expenses of counsel for KCATA, incurred in connection with any such action.

D. **Release of Liability.** Contractor, its officers, directors, employees, heirs, administrators, executors, agents and representatives and respective successors and assigns hereby fully release, remise, acquit and forever discharge the KCATA and its commissioners, officers, directors, attorneys, employees, agents, representatives and its respective successors and assigns from any and all actions, claims, causes of action, suits, rights, debts, liabilities, accounts, agreements, covenants, contracts, promises, warranties, judgments, executions, demands, damages, costs and expenses, whether known or unknown at this time, of any kind or nature, absolute or contingent, existing at law or in equity, on account of any matter related to this agreement, cause or thing whatsoever that has happened, developed or occurred before or after you sign and deliver this Contract to KCATA. This release will survive the termination of this Contract.

**23. LICENSING, LAWS, AND REGULATIONS**

* 1. The Contractor shall, without additional expense to KCATA, be responsible for obtaining any necessary licenses and permits, and for complying with all federal, state, and municipal laws, codes, and regulations applicable to the providing of products, equipment or materials, or the performance of the Services, under this Contract.
	2. The Contractor shall comply with all applicable and current rules, regulations, and ordinances of any applicable federal, state, county or municipal governmental body or authority, including but not limited to those as set forth by the Environmental Protection Agency, the Missouri Department of Natural Resources, the Kansas Department of Health and Environmental, the FTA, the Department of Transportation, and the City of Kansas City, Missouri.

**24. NOTIFICATION AND COMMUNICATION**

A. Communications regarding technical issues and activities of the project shall be exchanged with Michael Collison, Benefits & Compensation Manager, at mcollison@kcata.org

B. Issues regarding the contract document, changes, amendments, etc. are the responsibility of KCATA’s Procurement Department. All notices and communications on all matters regarding this Contract may be given by delivery or mailing the same postage prepaid, addressed to the following:

 If to KCATA: Andrew Campbell, Procurement Buyer

 Kansas City Area Transportation Authority

 1200 East 18th Street

 Kansas City, MO 64108

 If to Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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C. The Contractor shall notify KCATA immediately when a change in ownership has occurred or is certain to occur.

D. The addresses to which notices may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

**25. OWNERSHIP, IDENTIFICATION, AND CONFIDENTIALITY OF WORK**

* + - 1. All reports, programs, documentation, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Contractor shall be and are the property of KCATA and shall be identified in an appropriate manner by a title containing KCATA’s name and address.

B. KCATA shall be entitled to copies of these materials during the progress of the work.

C. Any data produced by Contractor’s software shall be transferred to KCATA at no cost, in a timely manner, and in the format required by KCATA to access and utilize the data.

D. Any such material remaining in the possession of the Contractor or in the possession of a subcontractor upon completion or termination of the work, and for which KCATA has reimbursed the contractor, shall be immediately delivered to KCATA. If any materials are lost, damaged, or destroyed before final delivery to KCATA, the Contractor shall replace them at its own expense, and the Contractor assumes all risks of loss, damage, or destruction of or to such material.

E. The Contractor may retain a copy of all materials produced under this Contract for its own internal use.

F. Any KCATA materials to which the Contractor has access or materials prepared by the Contractor shall be held in confidence by the Contractor, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees, and agents of the Contractor as necessary to accomplish the work set forth in this agreement.

G. Access to copies of any reports, information, data, etc., available to or prepared or assembled by the Contractor under this Contract shall not be made available to any third party by the Contractor without the prior written consent of KCATA.

**26. PRIVACY ACT REQUIREMENTS**

1. The Contractor agrees to comply with, and assures the compliance of its employees and subcontractors with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552. Among other things, the Contractor agrees to obtain the express consent of the KCATA and/or the Federal Government before the Contractor or its employees operate a system of records on behalf of the KCATA or Federal Government.
2. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to all individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
3. The Contractor agrees that strict privacy will be maintained in the collection, storage, use, transfer, access to and/or security of personnel information. Contractor agrees to protect such information, and to limit the use of the information to that required by the contract.
4. Contractor shall be liable to each employee for loss of any private or personal information lost or left unsecure by Contractor. Contractor shall not have any personal employee information for any reason outside of this contract.

**27. PROHIBITED INTERESTS**

1. No board member, officer, employee or agent of KCATA or of a local public body who has participated or will participate in the selection, award, or administration of this Contract, nor any member of his or her immediate family, business partner or any organization which employs, or intends to employ any of the above during such period, shall have any interest, direct or indirect, in this Contract or the proceeds thereof, to any share or part of this Contract, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.
2. No member of, or delegates to, the Congress of the United States shall be admitted to any share or part of the Contract, or to any benefit arising there from. This shall not be construed to prevent any such person from owning stock in a publicly owned corporation.

**28. PROHIBITED WEAPONS AND MATERIALS**

1. Missouri Revised Statutes, Section 571.107 (RSMo §571.107) allows government units and businesses to prohibit persons holding a concealed carry endorsement from carrying concealed firearms on its premises. Accordingly, KCATA has adopted the following rules prohibiting weapons, whether concealed or not, and whether or not the individual carrying the weapon has an endorsement or permit to carry.
2. No weapon, including firearms concealed or not, or other instrument intended for use as a weapon, or any object capable of inflicting serious bodily injury upon another person or property may be carried in or on any facility or property of KCATA, including vehicles of contractors parked on KCATA property or leased facilities, or vehicles used in transporting KCATA customers, even if a person has a permit to carry a concealed weapon, unless authorized in writing to do so by KCATA. For the purposes hereof, a weapon shall include, but not be limited to, a firearm, knife, sword, mace, or any instrument of any kind known as blackjack, billy club, club, sandbag, and metal knuckles.
3. No explosives, flammable liquids, acids, fireworks, other highly combustible materials, radioactive materials, or biochemical materials may be carried on or in any KCATA property, facility, or vehicle, including vehicles of contractors parked on KCATA property or leased facilities, or vehicles used in transporting any KCATA customer, except as authorized in writing by KCATA.
4. Any contractor, subcontractor, employee or agent thereof, who has a firearm or other weapon, including those used for recreational purposes, in his/her possession, including on his/her person, in a vehicle on an KCATA facility, in a vehicle carrying KCATA customers, or accessible such as in first aid kits, toolboxes, purses, lunch or carrying bags, etc., at any time while performing KCATA contracted services or on KCATA property, including parking lots, concealed or not, shall be immediately prohibited from performing any further KCATA work, even if the person has a permit to carry a concealed weapon.
5. Any KCATA contractor, subcontractor, employee or agent thereof, while performing KCATA contracted services or on any KCATA property or facilities, who has in his/her possession, carries, transports, displays, uses, flourishes, or threatens another person with a weapon, radioactive material, biochemical material or other dangerous weapon, object or material, which has the capability of inflicting bodily injury, shall be immediately prohibited from performing any further KCATA work and reported to local law enforcement authorities.

**29. QUALIFICATION REQUIREMENTS**

Qualification Requirement, as used in this clause, means a KCATA requirement for testing or other quality assurance demonstration that must have been completed before award. One or more qualification requirements apply to the supplies or services covered by this Contract, whether the covered product or service is an end item under this agreement or simply a component of an end item. The product or service must be qualified at the time of award of this Contract, whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, KCATA discovers that an applicable qualification requirement was not in fact met at the time of award, KCATA may either terminate this Contract for default or allow performance to continue if adequate consideration is offered and KCATA determines the action is otherwise in KCATA's best interest

**30. RECORD RETENTION AND ACCESS**

1. The Contractor agrees that, during the course of this agreement and any extensions thereof, and for three years thereafter, it will maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to this Contract in accordance with 2 C.F.R. §§ 200.333. In the event of litigation or settlement of claims arising from the performance of this Contract, the Contractor agrees to maintain same until such litigation, appeals, claims, or exceptions related thereto have been disposed of.
2. The Contractor shall permit KCATA, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, as applicable, any local municipality, to inspect all work, materials, construction sites, payrolls, and other data and records, and to audit the books, records, and accounts of the Contractor relating to its performance under this Contract.
	1. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed, and to include this clause in all subcontracts.

**31. REQUESTS FOR PAYMENT**

1. Invoices requesting payment shall be submitted electronically to KCATA’s dedicated Accounts Payable email at payme@kcata.org. All invoices shall be numbered, dated, and contain full descriptive information of services and materials furnished. All invoices and correspondence shall reference KCATA’s internal FSM contract number, purchase order number. Supporting documentation to be attached to Contractor’s invoice may include subcontractor or equipment invoices and receipts for eligible travel expenses. Contractor shall provide a breakout of employees, number of hours worked, rate of pay, overhead, and fee. This information shall also be provided for each subconsultant and include a copy of the subconsultant’s invoice for the work performed.
2. Payment by KCATA will be made within the later of 1) 30 days after receipt of a proper invoice, or 2) 30 days after KCATA’s acceptance of supplies delivered or services performed by the Contractor. On a final invoice where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.
3. All final invoices shall be submitted to KCATA within 90 days of project completion or contract termination. Invoices submitted more than 90 days after project completion or contract termination will not be valid and will not be paid. Contractor indemnifies and holds KCATA harmless for any suit filed for payment of invoices submitted after 90 days of project completion or contract termination.
4. **Subcontractor Payments.**
5. Prompt Payment. The Contractor shall establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each DIVERSE and non-DIVERSE subcontractor for satisfactory performance of its contract, or any billable portion thereof, in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of the Contractor’s receipt of payment from the Authority for work by that subcontractor.
6. Prompt Return of Retainage. If retainage is withheld from subcontractors, the Contractor is required to return any retainage payment to its DIVERSE and non-DIVERSE subcontractors in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of receipt of the retainage payment from the Authority related to the subcontractor’s work. Any delay or postponement of payment from said time frame may occur only for good cause following written approval from KCATA.
7. The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors. Lien waivers may be required for the Contractor and its subcontractors. The Contractor shall notify KCATA on or before each payment request, of any situation in which scheduled subcontractor payments have not been made.
8. If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and if deemed appropriate by the Authority, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.
9. The Contractor agrees that the Authority may provide appropriate information to interested subcontractors who inquire about the status of Authority payments to the Contractor.
10. Nothing in this provision is intended to create a contractual obligation between the Authority and any subcontractor or to alter or affect traditional concepts of privity of contract between all parties.

**32. RIGHT TO OFFSET**

KCATA, without waiver or limitation of any rights, may deduct from any amounts due Contractor in connection with this Contract, or any other contract between Contractor and KCATA, any amounts owed by Contractor to KCATA, including amounts owed by Contractor pursuant to Contractor’s obligation to indemnify KCATA against third party claims arising out of Contractor’s performance of work under this Contract.

**33. SEAT BELT USE POLICY**

Contractor agrees to comply with terms of Executive Order No. 13043 “Increasing Seat Belt Use in the United States” and is encouraged to include those requirements in each subcontract awarded for work relating to this Agreement.

**34. SEVERABILITY**

If any clause or provision of this Contract is held to be invalid illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall continue in full force and effect.

**35. SUBCONTRACTORS**

1. **Subcontractor Approval.** None of the work or services covered by this Contract shall be subcontracted without the prior written approval of KCATA. The only subcontractors approved for this Contract, if any, are listed in an appendix to this Contract. Any substitutions or additions of subcontractors must have the prior written approval of KCATA as set forth herein.
2. The Contractor is responsible for managing and directing the work of the Subcontractors and for all actions of subcontractors performing work under this Contract. Any contact from Subcontractors to KCATA shall be limited to KCATA’s Director of Procurement.
3. **Diverse Subcontractor Employment.** See Disadvantaged Business Enterprise Provisions.
4. **Subcontractor Payments.** See Requests for Payment Provisions.
5. **Adequate Provision(s) in Subcontract(s).** Any subcontracts related to this Contract must contain adequate provisions to define a sound and complete agreement. In addition, all subcontracts shall contain contractual provisions or conditions that allow for:

1. Administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, including sanctions and penalties as may be appropriate.

2. Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.

3. The following provisions if included in this Contract:

Acceptance of Services/Deliverables – No Release

ADA Access Requirements

Agreement in Entirety

Assignment

Bankruptcy

Breach of Contract; Remedies

Changes

Civil Rights

Conflicts of Interest

Continuity of Services

Contractor’s Personnel

Contractor’s Responsibility

Diverse Business Enterprise (DBE)

Dispute Resolution

Employee Eligibility Verification

Force Majeure

General Provisions

Governing Law: Choice of Judicial Forum

Hazardous Material

Headings

Independent Contractor

Inspection of Services

Insurance

Liability and Indemnification

Licensing, Laws and Regulations

Notification and Communication

Ownership, Identification, and Confidentiality of Work

Privacy Act Requirements

Prohibited Interests

Prohibited Weapons and Materials

Record Retention and Access

Requests for Payment

Right to Offset

Seat Belt Use Policy

Severability

Subcontractors

Suspension of Work

Termination

Texting While Driving and Distracted Driving

Unavoidable Delays

Warranty

1. The Contractor will take such action with respect to any subcontractor as KCATA or the U.S. Department of Transportation may direct as means of enforcing such provisions of this contract.
2. KCATA reserves the right to review the Contractor’s written agreement with its subcontractors (diverse and non-diverse) to confirm that required federal contract clauses are included.
3. KCATA may perform random audits and contact minority subcontractors to confirm the reported diverse participation.

**36. SUSPENSION OF WORK**

KCATA may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work under this agreement for the period of time that KCATA determines appropriate for the convenience of KCATA.

**37. TERMINATION**

A. **Termination for Convenience**. The KCATA may terminate this Contract, in whole or in part, at any time by written notice to the Contractor when it is in KCATA’s best interest. The Contractor will only be paid the Contract price for supplies delivered and accepted or work or services performed in accordance with the manner of performance set forth in the Contract.

B. **Funding Contingency.** If this Contract is subject to financial assistance provided by the U.S. Department of Transportation, the Contractor agrees that withdrawal or termination of such financial assistance by the U.S. DOT may require KCATA to terminate the agreement.

* 1. **Termination for Default.**
1. If the Contractor does not deliver supplies in accordance with the contract delivery schedule or according to specifications, or if the Contract is for services, and the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any other provisions of the Contract, KCATA may terminate this Contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth cost of the Contract.
2. If the termination is for failure of the Contractor to fulfill the contract obligations, KCATA may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by KCATA. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, KCATA, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
	1. **Opportunity to Cure.** KCATA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the written notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to KCATA’s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time period permitted, KCATA shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude KCATA from also pursuing all available remedies legal and non-legal against Contractor and its sureties for said breach or default.
	2. **Waiver of Remedies for any Breach.** In the event that KCATA elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by KCATA shall not limit KCATA’s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.
	3. **Property of KCATA**. Upon termination of this Contract for any reason, and if the Contractor has any property in its possession or under its control belonging to KCATA, the Contractor shall protect and preserve the property or pay KCATA full market value of the property, account for the same, and dispose of it in the manner KCATA directs. Upon termination of this Contract for any reason, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to KCATA’s Project Manager all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.

**38. TEXTING WHILE DRIVING AND DISTRACTED DRIVING**

Consistent with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009, the Contractor agrees to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to encourage each subcontractor to do the same.

**39. UNAVOIDABLE DELAYS**

A. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor’s performance, and was not caused directly or substantially by acts, omissions, negligence, or mistakes of the Contractor, the Contractor’s suppliers, or their agents, and was substantial and in fact caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

* 1. **Notification of Delays.** The Contractor shall notify the Director of Procurement as soon as the Contractor has, or should have, knowledge that an event has occurred which will cause an unavoidable delay. Within five (5) days, the Contractor shall confirm such notice in writing, furnishing as much as detail as is available.
	2. **Request for Extension.** The Contractor agrees to supply, as soon as such data is available, any reasonable proof that is required by the Director of Procurement to make a decision on any request for extension. The Director of Procurement shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. The Director of Procurement shall notify the Contractor of its decision in writing.
	3. It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation and shall not be reimbursed for losses on account of delays resulting from any cause under this provision, except to the extent the Contractor’s delay was attributable to KCATA’s non-performance of its duties herein.

**40. WARRANTY**

1. The Contractor agrees that equipment, materials, or services furnished under this Agreement, shall be covered by the most favorable warranties the Contractor gives to any customer of such equipment, materials, or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to KCATA by any other clause in this Contract.
2. The Contractor warrants to KCATA, that all products, equipment, and materials furnished under this Contract will be of highest quality and new unless otherwise specified by KCATA, free from faults and defects in workmanship or materials, merchantable, suitable for its intended purpose and in conformance with the Contract. All work not so conforming to these standards shall be considered defective. If required by KCATA, the Contractor shall furnish satisfactory evidence as to the kind and quality of products, equipment, and materials. Further, at a minimum, all such products, equipment or materials must be merchantable, comply with all applicable specifications and laws and be suitable for its intended purposes. The workmanship must be the best obtainable in the various trades.
3. The work must be of safe, substantial, and durable construction in all respects. The Contractor hereby guarantees the work against defective materials or faulty workmanship for a minimum period of one (1) year after final payment by KCATA and shall replace or repair any defective products, equipment or materials or faulty workmanship during the period of the guarantee at no cost to KCATA.
4. Upon final acceptance by KCATA of all work to be performed by the Contractor, KCATA shall so notify the Contractor in writing. The date of final acceptance shall commence the warranty period. Date