

ACCESS AGREEMENT

THIS ACCESS AGREEMENT is made and entered into as of the first day of June, 2013, by and between:

HUTCHINSON COMMUNITY COLLEGE, a community college and political subdivision of the State of Kansas, hereinafter referred to as "HCC" and

SEDGWICK COUNTY, KANSAS, a political subdivision of the State of Kansas, hereinafter referred to as the "County".

RECITALS:

WHEREAS, the County is one of the Kansas political subdivisions that comprise the Department of Homeland Security South Central Homeland Security Region hereinafter referred to as the "Region" and which is referred to herein as a "Region Member" or as the County; and

WHEREAS, HCC maintains and operates an emergency communication dispatch training facility located in Pioneer Hall, on the HCC South Campus (the "HCC Dispatch Center");

WHEREAS, the United States Department of Homeland Security, through the Kansas Highway Patrol, its designated state agency, has granted to the Region a sum of money to be used to purchase back-up emergency communications equipment located or to be located and installed in the HCC Dispatch Center for the benefit of the Region Members; and

WHEREAS, HCC and the City of Hutchinson, Kansas have entered into a certain Alternate Public Safety Answering Point Agreement, (the "Answering Point Agreement") pursuant to which HCC has agreed to make the HCC Dispatch Center available to the City and to the Region member counties for training and emergency use;

WHEREAS, HCC and the County wish to enter into this Access Agreement for the purpose of describing the terms and conditions under which the County shall have access to the HCC Dispatch Center for such purposes.

NOW, THEREFORE, in consideration of the mutual promises herein contained, HCC and the County hereby agree as follows:

Section 1. Available Equipment. Pursuant to the Answering Point Agreement, certain equipment is or shall be installed in the HCC Dispatch Facility consisting of a 6- position PSAP 911 telephony, VHF/UHF/800 MHz radios, phone/voice logger-recorder together with the related computer/software and a standby electrical generator together with appropriate dedicated telephone equipment required for emergency dispatch use which is referred to herein, collectively, as the "Communications Equipment."

Section 2. County Access to Communications Equipment. The Communications Equipment shall be available to the County for emergency use at any time such use may be required by the County without charge to the County. The County also shall have access to the Communications Equipment one day each month for training purposes but scheduling of such access shall be at HCC's discretion to avoid conflicts with HCC classes. County's access to the HCC Dispatch Center shall be solely for the purposes set forth herein

Except when the Communications Equipment is required for such emergency or training purposes by the County or other Region members, the Communications Equipment shall be available to HCC for use in connection with its emergency communications dispatch training curricula.

Section 3. Obligations of the County. In connection with its use of the HCC Dispatch Center and the Communications Equipment, the County hereby agrees, for itself and on behalf of its agents, servants and employees in connection with its use of the HCC Dispatch Center and the Communications Equipment:

(A) no Hazardous Substance, as such term is defined pursuant to K.S.A. 65-3452a by reference to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ["CERCLA"] as amended by the Superfund Amendments and Reauthorization Act ["SARA"], each as amended, shall be released onto or into the HCC Dispatch Center or any neighboring property or into the air, the surface water or groundwater any; and.

(B) County shall carry and maintain commercial general liability insurance with available limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage combined, One million Dollars (\$1,000,000) general aggregate. Such insurance shall include coverage for all premises and operations, broad form property damage and contractual liability and shall be (1) endorsed to name HCC and its Trustees, officers, agents and employees as additional insureds with respect to any liability arising out of County's access to and use of the Communications Equipment pursuant to this Access, (2) be endorsed to be primary to any insurance maintained by HCC, (3) contain a severability of interest provision in favor of the Additional Insured and (4) contain a waiver of any rights of subrogation against the Additional Insured; and

(C) County shall carry and maintain insurance in accordance with applicable Kansas law relating to workers' compensation insurance and benefits with respect to all County employees present on the premises of the HCC Dispatch Center; and.

(D) County shall furnish HCC prior to the date the County first accesses the HCC Dispatch Center, and thereafter maintain during the term of this Access Agreement, a current and valid Certificate of Insurance evidencing the insurance coverage required to be maintained by the County in accordance with this Access Agreement.

Section 4. Disclaimer of Warranties. HCC makes no warranty of any kind to County concerning the HCC Dispatch Center or other property owned by HCC regarding its condition or fitness for the County's purposes. The County hereby accepts said property in its "as-is" condition and hereby waives, releases, and renounces any and all claims against HCC relating to the property, its condition, or its fitness for the County's purposes, including any and all claims arising out of or alleging HCC's fault or negligence.

Section 5. Term of Agreement. This Access Agreement shall be for an initial term commencing as of the date of its approval by the County as set forth below and ending June 30, 20__ and shall thereafter automatically be renewed for additional terms of one year commencing as of each July 1 and ending on June 30 of the succeeding calendar year unless either party shall give written notice to the other of its intent to terminate this Access Agreement as of the end of the initial term or the then current additional term.

Section 6. Termination of Agreement by HCC. This Access Agreement may be terminated at the option of HCC upon thirty days written notice in the event of any termination of the Answering Point Agreement referred to in the Recitals to this Agreement.

Section 7. Binding Agreement; Incorporation by Reference. This Access Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, is binding upon the parties hereto and their respective successors and assigns and may be amended only by an instrument in writing executed by the parties hereto. In accordance with K.S.A. 71-201c, as amended, the provisions of the State of Kansas Department of Administration Form DA-146a attached hereto are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have have approved and executed this Access Agreement as of the respective dates set forth below.

Date: _____

**HUTCHINSON COMMUNITY COLLEGE
& AREA VOCATIONAL SCHOOL**

By _____
Dr. Edward Berger, President

“HCC”

Date: _____

SEDGWICK COUNTY, KANSAS

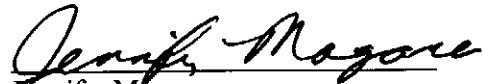
(Seal)
Attest:

By _____
James B. Skelton, Chairman
Board of County Commissioners of Sedgwick County

The “County”

Kelly B. Arnold
County Clerk

APPROVED AS TO FORM ONLY:


Jennifer Magana
Deputy County Counselor

CONTRACTUAL PROVISIONS ATTACHMENT

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

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

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

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

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

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information**: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."