



DEPARTMENT OF PARKS AND RECREATION

**R E Q U E S T F O R
P R O P O S A L S**

Artificial Turf for Salina Fieldhouse

October – 2016

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REQUEST FOR PROPOSALS

The City of Salina, Kansas is currently accepting proposals for the design and supply of new portable sports turf for the Salina Fieldhouse, Salina, Kansas 67401. Sealed proposals will be accepted, at the office of the City Clerk, City-County Building, 300 West Ash, Room 206 Salina, Kansas, until **10:00 a.m. (CST), Tuesday, November 22, 2016.**

RFP – Artificial Turf for Salina Fieldhouse

The specifications and other contract documents are available for public inspection at the office of the Parks and Recreation Department, City-County Building 300 West Ash, Room 100, Salina, Kansas. The documents may be obtained from the office of the Parks and Recreation Department.

The City of Salina, Kansas, reserves the right to reject any or all proposals and to waive any irregularities therein.

THE CITY OF SALINA, KANSAS

/s/ Shandi Wicks
CITY CLERK

INFORMATION FOR PROPOSERS

1. INVITATION TO SUBMIT PROPOSALS

- 1.1 The City of Salina is soliciting sealed Proposals for the design and supply of new portable sports turf for the Salina Fieldhouse. The deadline for receiving Proposals is November 22, 2016, at 10:00 a.m. (CST). All Proposals must be received at the City-County Building, 300 W. Ash, Room 206, P.O. Box 736, Salina, Kansas 67402.
- 1.2 Proposals must be hand-delivered, or sent via return receipt delivery effected by certified mail, priority mail, commercial courier service, overnight delivery service, or other reliable personal delivery service to the City's above-referenced address. Fax proposals will not be accepted. Proposals received after the specified time and date will be returned unopened.
- 1.3 Proposals will be opened and tabulated at a later date.

2. DEFINITIONS

- 2.1. Terms used in this Information for Proposers shall have the meanings assigned to them in the General Clauses enclosed herewith, provided that the following additional terms shall have the following meanings:
 - Contract: A binding legal agreement between the City and the Successful Proposer, which includes, without limitation, the City's Standard Purchase Terms and Conditions.
 - Deliverables: The goods, products, equipment, materials, and/or services to be provided to the City under a Contract with the Successful Proposer.
 - Proposal: A completed and properly signed and submitted offer to provide the services and equipment as specified in the RFP Documents, which includes a price therein as specified by the Proposer, together with all required information and other submittals, and which, if accepted by the City, will bind the Proposer to perform the resultant Contract. The term "Proposal" shall have the same meaning as, and shall be deemed to constitute, a "Bid" for purposes of interpreting the Contract Documents.
 - Proposer: A person or entity who submits a Proposal in accordance with the RFP Documents.
 - RFP Documents: This Request for Proposals and all attachments hereto, and the Proposal.
 - Specifications: The stated minimum requirements for a Proposal to be considered by the City, including those set forth in Attachment #1 attached to this Request for Proposals, and all other written the directions, provisions, and requirements pertaining to: (a) the kind and type of Deliverables; (b) the qualities of materials to be furnished; and/or (c) the method and manner of providing the related services.
 - Successful Proposer: The Proposer submitting a responsive Proposal to whom the City awards a Contract.

3. DESCRIPTION OF PROJECT

3.1. The Salina Fieldhouse is a 64,000 square foot indoor facility that is currently under construction. Plans call for a gym space that will house 3 wood basketball courts. Another gym space of 22,834 square feet will have a synthetic surface convertible into artificial turf. This proposal deals only with the gym area that will be convertible from synthetic courts into turf space. The artificial turf should be a panelized or portable turf that can be easily removed and stored within the facility. The proposal should include any equipment or items necessary for the removal and storage of the turf.

4. PROPOSAL SUBMISSIONS

4.1 Written Proposals shall be typewritten or written in ink, in such form and containing such information as requested herein. Officials of corporations shall designate their official title; partners or sole owners shall so state, giving the names of all interested parties. The person signing the Proposal shall initial all corrections or erasures.

4.2 Sufficiency of Documents, Interpretations, Addenda.

4.2.1 The submission of a Proposal will constitute an incontrovertible representation that the Proposer will comply with every term and condition of the Contract Documents and that such documents and specifications therein are sufficient in scope and detail to indicate and convey understanding of all requirements for furnishing the services and all associated parts and equipment.

4.2.2 Any questions about the meaning or intent of the Contract Documents or requirements are to be submitted in writing to the Project Manager not less than five (5) calendar days prior to the date of Proposal opening. Questions submitted will be answered by written addenda issued to all prospective Proposers who have obtained a copy of this Request for Proposals from the City. Oral or other interpretations or clarifications will be void, without any legal effect and do not bind the City.

4.2.3 Addenda to the Contract Documents shall be properly acknowledged in the Proposer's Proposal.

4.3 Proposals with all required submittals shall be submitted at the time and place indicated in this Request for Proposals, in writing within a sealed envelope addressed to the City of Salina, in care of *Shandi Wicks, City Clerk, City-County Building, 300 W. Ash, Room 206, P.O. Box 736, Salina, Kansas 67402* and identified on the outside with Proposer's name and address and the title *RFP-Artificial Turf for Salina Fieldhouse*.

4.4 The City is exempt from Kansas sales tax on materials and equipment to be incorporated into the work. Consequently, sales tax shall not be included in the proposed contract price.

4.5 All Proposals received will become the property of the City and will not be returned to the Proposers.

4.6 All costs incurred by a Proposer in preparation of a Proposal will be borne solely by the Proposer.

4.7 All questions concerning this project shall be forwarded to the Project Manager listed below:

Chris Cotten, Director of Parks and Recreation
300 W. Ash Street, P.O. Box 736
Salina, KS 67402-0736
Telephone Number: (785) 309-5765
Email: chris.cotten@salina.org

5. PROPOSAL SECURITY

5.1 The City’s Proposal security requirements are as follows: (“X” indicates applicability):

<input type="checkbox"/>	Each Proposer shall submit with its Proposal a certified check, cashier’s check, or an acceptable bidding bond (written on a penal sum form), in the amount of five percent (5%) of the total amount shown on the Proposal. The Proposal security shall be made payable to the City and will serve as a good faith guarantee that the Proposer will enter into any Contract awarded to the Proposer in accordance with the terms of the Proposal. If the Successful Proposer fails or refuses to enter into a Contract, or to hold the Proposal price, terms, or conditions firm, then, in addition to exercising any other available remedy at law or in equity, the City may consider the Proposer to be in default and the Proposal security of that Proposer shall be forfeited and the money derived therefrom will be turned to the use of the City. The City may retain the security of any Proposer until sixty-one (61) days after the Proposal opening, at which time the Proposal security shall be returned to all unsuccessful Proposers.
<input checked="" type="checkbox"/>	Proposal security is not required for this project.

6. MULTIPLE PROPOSALS

6.1. Proposers may submit more than one Proposal for the City’s consideration, in order to propose different design layouts, technical specifications, or general solutions to the City’s needs. If multiple Proposals are submitted by a single Proposer, each Proposal should be prepared on a separate Proposal Cover Page, and submitted to the City in a separate envelope with the documents and information requested in Section 12 below. If alternate Proposals are submitted, only one Proposal security submission is required (if applicable pursuant to Section 5 above), provided that such security is based on the amount of the Proposer’s highest single Proposal.

7. PROPOSAL WITHDRAWAL

7.1 Proposals may be withdrawn by notice in writing only if received by the City prior to Proposal opening. After opening, Proposals may not be withdrawn and shall remain open for sixty (60) days.

8. SITE VISITS

8.1 Site visits are not mandatory, but interested Proposers are strongly encouraged to view the plans of the Salina Fieldhouse before submitting a Proposal. Any interested Proposer wishing to visit the Salina Fieldhouse for the purpose of gathering additional information should contact the Project Manager to schedule an appointment.

9. PROJECT TIMELINE

9.1 The City’s anticipated schedule for solicitation, commencement, and completion of the project is as follows:

Advertise and Issue Request for Proposals -----October 30, 2016
Proposals Due and Opened -----November 22, 2016
Commence Proposal Review, Interviews, and/or Negotiations----- December 6, 2016
Notice of Award and Execution of Contract -----December 19, 2016
Order Product-----December 30, 2016
Product Delivery -----Spring, 2017 T.B.D.

10. AWARD OF CONTRACT; SELECTION CRITERIA

- 10.1 The City reserves the right to reject any and all Proposals; to waive any and all informalities or defects; to disregard all nonconforming, non-responsive or conditional Proposals; or to accept such Proposals as shall be deemed to be in the best interest of the City so to do. Discrepancies between words and figures will be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 10.2 In evaluating Proposals, the City will consider the Proposers' qualifications, understanding of the project and proposed solution, experience, references, cost proposal, ability to meet the project deadlines, and overall ability to satisfy the City's needs. The City may also consider operating, maintenance and supply costs, service response time, performance data, guarantees of materials and equipment and any other such data at the City's discretion.
- 10.3 The City may award a contract on the basis of initial Proposals received. However, the City reserves the right to request additional information from any or all Proposers. Therefore, each Proposal submitted should contain the Proposer's best terms.
- 10.4 Within ten (10) days of receiving a notice of award, the successful Proposer shall execute a Contract with the City, in a form substantially similar to that attached hereto. Proposers should include with their Proposal submissions any proposed changes or alternative contract language for the City's consideration and potential negotiation. Submission of a Proposal shall be deemed on offer to contract on the terms set forth in the City's proposed Contract, unless exceptions or alternative contract terms are otherwise expressly indicated in the submitted Proposal.

11. GENERAL SCOPE OF WORK; SPECIFICATIONS

- 11.1. The Successful Proposer shall provide portable artificial turf for the Salina Fieldhouse to fit a 22,834 square foot area. Proposers are expected to provide all equipment, design, installation instructions and transportation to the site. In addition, the Successful Proposer will perform the following;
 - 11.1.1 Provide portable artificial turf that is infill free
 - 11.1.2. Commit the required personnel to attend various project team meetings with City staff to coordinate the design of a custom field to fit our facility to achieve the desired results.
 - 11.1.3 Provide turf that meets all key industry requirements for performance including shock absorption, energy restitution and ball rebound.
 - 11.1.4 Provide all equipment necessary to store the turf material when needed.
 - 11.1.5 Provide all training necessary to train staff to install, remove and store turf as needed.
 - 11.1.6 Deliver all equipment to the site.
 - 11.1.7 Provide warranty for all equipment.
- 11.2. Contractor shall provide a complete, new, turnkey turf system capable of handling all of the functions as described herein, and Proposers are expected to provide all equipment, material, design and initial installation supervision, tools, transportation, and any other resources

necessary to provide and install the complete system. In addition, the Contractor will perform and be responsible for all items listed in **RFP Attachment #1 – Scope of Work**.

12. PROPOSAL FORM AND REQUIREMENTS

12.1 To submit a Proposal, the Proposer must complete and submit the Proposal Cover Page, in the form attached hereto as **RFP Attachment #2**. The Proposal Cover Page shall, among other things, provide a cost proposal for all of the proposed Work, including design, accessories and equipment, delivery, and installation. The completed Proposal Cover Page form will serve as the cover page for the remaining documents and information requested.

RFP ATTACHMENT #1
SCOPE OF WORK

1. General Scope of Work

1.1 The Contractor shall be responsible for the supply, design and installation of new portable artificial turf for the Salina Fieldhouse

1.2 The artificial turf presented must be infill free.

1.3 The area that will have the portable artificial turf is 206 X 116 feet = 23,743 square feet.

1.4 The Contractor will provide customized turf for this 23,743 square foot area, filling in main playing fields and all of the corners, sides, and non-playing areas.

1.5 The artificial turf proposed must be removable.

1.6 The artificial turf proposed must meet all key industry requirements for performance including shock absorption, energy restitution and ball rebound. The technical specifications for the proposed turf should be included in the proposal.

1.7 The Contractor must provide the equipment needed to store the artificial turf on-site.

**RFP ATTACHMENT #2
PROPOSAL COVER PAGE FOR
PORTABLE ARTIFICIAL TURF AT THE SALINA FIELDHOUSE**

TO THE BOARD OF COMMISSIONERS
CITY OF SALINA, KANSAS

Commissioners:

1. **Proposal to Enter into Contract.** The undersigned Proposer hereby submits the following Proposal for the services and Deliverables described in the accompanying documents, in accordance with the terms and specifications of the Request for Proposals and related RFP Documents. Proposer proposes and agrees, if this Proposal is accepted, to furnish all services and Deliverables for which a Contract is awarded, within the time indicated in this Proposal, in the manner and at the prices herein stated, and in accordance with the other terms and conditions of the RFP Documents.

2. **Proposer Acknowledgments.** Proposer accepts all of the terms and conditions of the RFP Documents, including but not limited to the City’s Standard Purchase Terms and Conditions. This Proposal will remain subject to acceptance for 90 days after the Proposal opening, or for such longer period of time that Proposer may agree to in writing upon request by the City

3. **Proposer’s Representations.** In submitting this Proposal, Proposer represents that:

a. Proposer has carefully reviewed the RFP Documents, and the following addenda, receipt of which is hereby acknowledged (*Note to Proposers – In this section, please indicate the title and date of each addendum received – e.g., “Addendum #1, dated _____, 2016”*):

1. _____

2. _____

3. _____

Proposer understands and agrees that in signing this Proposal, Proposer waives all right to plead any misunderstanding regarding the RFP Documents or the above-referenced addenda.

b. Proposer has given the Project Manager written notice of all conflicts, errors, ambiguities, or discrepancies that Proposer has discovered in the proposed RFP Documents, and the Project Manager’s written explanation is acceptable to Proposer.

4. **Price Proposal.** Proposer will provide the Deliverables as specified in this Proposal, together with all related services and equipment, for the following lump sum price: _____ (\$_____) (include attachment for any additional pricing options).

Proposer offers the following discount or promotional terms (include additional information regarding discount or promotional terms in attachment, if necessary):

_____.

All prices shall be F.O.B. destination Salina, Kansas with all transportation and handling charges paid by the Proposer.

5. **Time of Completion.** Proposer represents and warrants that, if this Proposal is accepted, all Deliverables and services shall be furnished, and all work shall be completed and ready for final payment, within _____ days of the City's acceptance of the Proposal.

6. **Definitions.** Terms used in this Proposal shall have the meanings assigned to them in the RFP Documents.

7. **Enclosures.** A detailed equipment list showing the type of equipment proposed, including a reference to the manufacturer, model number, and unit pricing for each item, including add or deduct options, is included with this Proposal. Proposer has attached hereto all documents and information requested therein.

NAME OF PROPOSER: _____

ADDRESS: _____

E-MAIL ADDRESS: _____

BY: _____

TITLE: _____

DATE SUBMITTED: _____

RFP Attachment #3 – Form of Contract

**CITY OF SALINA, KANSAS
AGREEMENT FOR SALE AND PURCHASE OF EQUIPMENT**

This Agreement for Sale and Purchase of Equipment (“Agreement”) is entered into _____, 2016, by and between the City of Salina, Kansas (the “City”) and _____, a _____ (the “Contractor”).

Recitals

A. The City issued a Request for Proposals requesting Proposals for the sale, delivery, and installation of new artificial turf for the Salina Field House, and related equipment, accessories, and services (“Deliverables”).

B. The City has determined the Contractor to be the Successful Proposer, and desires to contract for the purchase of the Deliverables described in the attached and incorporated Exhibit A, in compliance with federal, state, and local regulations.

C. The Contractor has the requisite qualifications and experience to furnish the Deliverables needed by the City and desires to furnish the Deliverables pursuant to the terms of this Agreement.

The parties, in consideration of the mutual promises set forth in this Agreement, agree and covenant:

1. Definitions. Except as otherwise provided herein, capitalized words used in this Agreement shall have the meanings indicated in the Request for Proposals.

2. Contract Documents. This Agreement, together with the Request for Proposals and the Contractor’s Proposal, including accompanying warranties, shall comprise the “Contract Documents.”

3. Sale of Deliverables. The Contractor agrees to sell, and the City agrees to buy, the Deliverables specified in the attached and incorporated Exhibit A, all in accordance with the Contract Documents.

4. Term; Schedule. The Seller agrees to furnish the Deliverables in accordance with the following schedule: _____.

5. Payment. In consideration for the Seller’s delivery of the Deliverables in accordance with the Contract Documents, the City shall pay to the Contractor the sum of \$ _____.

6. Incorporation of Standard Purchase Terms and Conditions. This Agreement shall be deemed to include, and shall be subject to, the City's Standard Purchase Terms and Conditions, which are set forth in the attached and incorporated Exhibit B.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives.

CITY OF SALINA, KANSAS

By: _____
Kaye J. Crawford, Mayor

By: _____

_____ (name)

_____ (title)

Attest: _____
Shandi Wicks, CMC, City Clerk

Form: _____
Legal Counsel

Exhibit A
Description of Deliverables

The Deliverables purchased under this Agreement shall consist of the following items, all of which shall conform to the Contract Documents, including the detailed Specifications contained in the City's Request for Proposals:

[TO BE PROVIDED]

EXHIBIT B
CITY OF SALINA, KANSAS
STANDARD PURCHASE TERMS AND CONDITIONS

1. Contractor's Obligations. The Contractor shall fully and timely provide all Deliverables described in the Contractor's Proposal in strict accordance with the terms, covenants, and conditions of this Agreement, the Specifications, and all applicable federal, state, and local laws.
2. Effective Date; Term. This Contract shall be effective as of the date of the City's purchase order, and shall continue in effect until all obligations are performed in accordance with this Contract. The Contractor shall furnish the Deliverables, and provide all related services, on or before the date(s) or within the time(s) specified in the Agreement.
3. Title & Risk of Loss. Title to and risk of loss of the Deliverables shall pass to the City only when clear and unencumbered title to the Deliverables has been furnished to the City and Notification of Acceptance has been issued by the City.
4. Delivery Terms and Transportation Charges. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. The place of delivery shall be that location set forth in the purchase order.
5. Inspections; Rejection; Withholding Acceptance Pending Cure. The City expressly reserves all rights to inspect the Deliverables within a reasonable time after delivery, and to reject defective or non-conforming goods. Notwithstanding anything to the contrary contained in applicable law or in any laws of sales or standards and practices in the industry, any acknowledgement of receipt or delivery of the Deliverables by the City shall not constitute acceptance by the City or waiver of any defects or nonconformance. Acceptance of the Deliverables shall not be deemed to occur until the City's issuance of the written Notification of Acceptance to the Contractor. The City reserves the right to reject the Deliverables, in whole or in part, if the Deliverables fail in any respect to conform to the Specifications and requirements contained in or made a part of the Proposal; if they are defective in any respect; or if they have not been properly or satisfactorily installed or equipped. If the Deliverables are substantially in compliance with the Specifications, but are defective or nonconforming to some degree, the City may, in its sole discretion, withhold acceptance until the Deliverables are rendered non-defective and conform in every respect to the Contract.
6. Invoices. Invoices shall be prepared and submitted in duplicate to the "ship-to" address specified on the purchase order. Separate invoices are required for each purchase order. Invoices shall contain the following information: purchase order number, item number, description of goods or services, sizes, units of measure, quantity, unit price, and extended totals.
7. Payment. The City shall pay the Contractor for goods and services rendered, in one lump sum, which shall be due and payable to Contractor within thirty (30) calendar days after the City's receipt of the invoice. Provided, however, that no payment shall be due until after: (a) the City has issued a Notification of Acceptance with respect to all Deliverables covered by the invoice; and (b) the Contractor has provided clear and unencumbered title to the Deliverables. No C.O.D.s will be accepted.
8. Warranties. The Contractor warrants and represents that all Deliverables sold to the City under this Contract shall be free from defects in design, workmanship or manufacture, and further represents and warrants that all Deliverables shall conform in all material respects to: (i) the Specifications, drawings, and descriptions; (ii) any samples furnished by the Contractor; (iii) the terms, covenants and conditions of this Contract; and (iv) all applicable state, federal or local laws, rules, and regulations, and industry codes and standards. These warranties shall be in addition to any other warranty or guarantee provided by the Contractor. Unless otherwise stated in the Specifications, the Deliverables shall be new merchandise, and not used or reconditioned. The Contractor may not limit, exclude or disclaim the forgoing warranties or any warranty implied by law, and any attempt to do so shall be without force or effect. The warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement

Deliverables, or such longer period as may be required by the Specifications. If the Contractor is not the manufacturer and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

9. Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees and court costs) attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, to the extent that such claims, damages, losses, and expenses relate to, arise out of, or are alleged to have resulted from the wrongful acts, errors, mistakes, omissions, or defective work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract.

10. Default. The Contractor shall be in default under this Contract if the Contractor fails to perform any of its obligations under this Contract within ten (10) days after written notice to comply has been mailed by the City to the Contractor ("Event of Default").

11. Remedies. Upon the occurrence of an Event of Default, the City may exercise any or all of the following remedies, which are in addition to, and not in lieu of, any other remedies available to the City under law or equity: (a) terminate this Contract and the Contractor's rights under the Contract; (b) procure the Deliverables from another source, and hold the Contractor liable for the difference in cost together with incidental and consequential damages, including costs and reasonable attorney fees; or (c) hold the Contractor liable for the difference between market price of the Deliverables and the agreed price herein, together with incidental and consequential damages, including costs and reasonable attorney fees. In addition, the City may pursue any available remedy at law or in equity (including specific performance) by suit, action, mandamus or other proceeding to enforce and compel the performance of the Contractor's duties and obligations set forth in this Contract, to enforce or preserve any other rights or interests of the City under this Contract or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Event of Default.

12. Termination without Cause. The City shall have the right to terminate this Contract, in whole or in part, without cause, at any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

13. Special Tools and Test Equipment. If the price stated in the Contractor's Proposal includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of fulfilling this Contract, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

14. Equal Opportunity.

(a) In conformity with the Kansas act against discrimination and Chapter 13 of the Salina Code, the Contractor and its subcontractors, if any, agree that:

(1) The Contractor shall observe the provisions of the Kansas act against discrimination and Chapter 13 of the Salina Code and in doing so shall not discriminate against any person in the performance of work under this Contract because of race, sex, religion, age, color, national origin, ancestry or disability;

(2) The Contractor shall include in all solicitations, or advertisements for employees, the phrase "equal opportunity employer," or a similar phrase to be approved by the city's human relations director;

- (3) If the Contractor fails to comply with the manner in which the Contractor reports to the Kansas human rights commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached this Contract and it may be canceled, terminated or suspended, in whole or in part, by the City;
 - (4) If the Contractor is found guilty of a violation of Chapter 13 of the Salina Code or the Kansas act against discrimination under a decision or order of the Salina human relations commission or the Kansas human rights commission which has become final, the Contractor shall be deemed to have breached this Contract and it may be canceled, terminated or suspended, in whole or in part, by the City;
 - (5) The Contractor shall not discriminate against any employee or applicant for employment in the performance of this Contract because of race, sex, religion, age, color, national origin, ancestry or disability; and
 - (6) The Contractor shall include similar provisions in any subcontract under this Contract.
- (b) The provisions of this section shall not apply to this Contract if the Contractor:
- (1) Employs fewer than four employees during the term of this Contract; or
 - (2) Contracts with the City for cumulatively \$5,000 or less during the City's calendar fiscal year.

15. Taxes. The equipment purchased hereunder is purchased by the City, a tax exempt entity, for public and municipal purposes and the parties understand that this sale shall be exempt from taxation.

16. Patent and Copyright Infringement. The Contractor shall be required to pay all royalties and license fees and shall defend, indemnify, and hold harmless the City, its agents, representatives, officers, officials and employees from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the City.

17. Non-appropriation. The City is subject to Kansas budget and cash basis laws, and operates on a calendar fiscal year. In the event that this Contract involves financial obligations spanning multiple fiscal years for the City, it is subject to annual appropriation by the City's governing body for future fiscal years. If the City's governing body does not appropriate the funds necessary to fulfill the City's financial obligations pursuant to this Contract, the City shall so notify the other parties to this Contract and this Contract shall be null and void for purposes of the fiscal year(s) affected by the decision of the governing body not to appropriate.

18. Relationship. It is expressly understood that the Contractor, in performing services under this Contract, does so as an independent contractor. The City shall neither have nor exercise any control or direction over the methods by which Contractor performs its services hereunder. The sole interest and responsibility of the City is to see that the services covered by this Contract are performed and rendered in a competent, efficient, and satisfactory manner. The Contractor shall be exclusively responsible for all taxes, withholding payments, employment-based benefits, deferred compensation plans, including but not limited to its workers compensation and social security obligations, and the filing of all necessary documents, forms, or returns pertinent to the foregoing.\

19. Notices. All notices required or permitted to be given pursuant to this Contract shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, commercial courier or overnight air courier service. Notice shall be considered given when received on the date appearing on the return receipt, but if the receipt is not returned within five (5) days, then three (3) days after mailed, if sent by registered or certified mail or commercial courier service; or the next

business day, if sent by overnight air courier service. Notices to the Contractor shall be to the address specified in the Contractor's Proposal, or at such other address as the Contractor may designate via a written notice to the City. Notices to the City shall be addressed to the City of Salina, Attn: City Clerk, P.O. Box 736, Salina, Kansas 67402-0736.

20. Compliance with Applicable Law. The Contractor shall comply with all applicable federal, state, and local law in the performance of this Contract.

21. Administration of Agreement. All references in this Contract to City's participation or approval shall mean the participation or approval of the City Manager, or his or her designee, unless otherwise provided herein.

22. Attorney Fees. If any suit or action is instituted by either party hereunder, including all appeals, the prevailing party in such suit or action shall be entitled to recover reasonable attorney fees and expenses from the non-prevailing party, in addition to any other amounts to which it may be entitled.

23. Right to Independent Legal Advice. The Contractor understands and acknowledges the right to have this Contract reviewed by legal counsel of the Contractor's choice.

24. Applicable Law; Venue. This Contract and its validity, construction and performance shall be governed by the laws of Kansas. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be in the Saline County, Kansas District Court.

25. Interpretation. This Contract shall be interpreted according to its fair meaning, and not in favor of or against any party.

26. Time. Time is of the essence of this Contract. No extension will be granted unless in writing and signed by the parties. Should the end of a time period fall on a legal holiday that termination time shall extend to 5:00 p.m. of the next full business day.

27. Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render the other provisions unenforceable, invalid, or illegal.

28. Amendments. Neither this Contract nor any of its terms may be changed or modified, waived, or terminated except by an instrument in writing signed by an authorized representative of the party against whom the enforcement of the change, waiver, or termination is sought. Without limiting the foregoing, no pre-printed or similar terms on any invoice, order, or other document shall have any force or effect to change the terms, covenants, and conditions of this Contract.

29. Waiver. No failure or delay by a party hereto to insist on the strict performance of any term of this Contract, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Contract, but each and every term of this Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

30. Conflict Resolution. No interpretation of this Contract shall be allowed to find the City has agreed to binding arbitration.

31. No Third Party Beneficiaries. Solely the parties to this Contract shall have rights and may make claims under this Contract. There are no intended third party beneficiaries under this Contract, and no third parties shall have any rights or make any claims hereunder.

32. Feminine-Masculine, Singular-Plural. Wherever used, singular shall include the plural, plural the singular, and use of any gender shall include all genders.

33. Headings. The headings of the sections of this Contract are included for the purposes of convenience only and shall not affect the interpretation of any provision hereof.

34. Binding Effect. This Contract shall extend to and bind the heirs, executors, administrators, trustees, successors and authorized assigns of the parties hereto.

35. Non-Assignable. Due to the unique qualifications and capabilities of the Contractor, neither the rights nor responsibilities provided for under this Contract shall be assignable by either party, either in whole or in part.

36. Entire Agreement. This Contract constitutes the entire agreement between parties and supersedes all prior oral written understandings. This Contract shall not be altered, modified, amended or changed except by written amendment signed by the parties.

