

MEMORANDUM OF AGREEMENT FOR MICROFILMING/DIGITAL IMAGING CONVERSION SERVICES

This Agreement entered into this ____ day of _____, 2012, by and between the City of Overland Park Kansas, a municipal corporation (“CITY”), and Kansas Correctional Industries (“KCI”).

WHEREAS, the CITY has a need to establish a long term image of certain planning documents; and

WHEREAS, the CITY has approved and proposes to have KCI provide micro-filming/digital imaging conversion services as needed.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SCOPE OF SERVICES

KCI shall furnish the necessary personnel, facilities and such other services as may be required to fulfill the tasks identified and described in Attachment No. 1.

ARTICLE I: CITY RESPONSIBILITIES

The CITY agrees:

- A. To utilize the services of KCI to perform the services described herein for the fee as stipulated.
- B. To designate a single contact person for KCI to contact concerning the work and terms of this Agreement.
- C. To reimburse KCI for services provided according to the fees established in Attachment No. 2.

ARTICLE II: VENDOR RESPONSIBILITIES

KCI agrees:

- A. To provide the services described herein for the fees stipulated in Attachment No. 2. These services are to be performed in a manner as prescribed by the CITY.
- B. To meet standard established in Attachment No. 1, unless otherwise amended by separate written agreement with the CITY.

- C. To provide transportation of the documents to and from KCI facilities.
- D. To be responsible for the security of all documents while in the custody of KCI, including having in place a document protection plan, disaster recovery plan and a business continuity plan.
- E. To provide a contact person for the CITY to contact concerning the work and terms of this Agreement.
- F. To provide corrected microfilm/digital images, if errors are found by the CITY, at KCI's expense. Any errors by KCI shall be corrected without any additional charge.
- G. To provide the CITY with a copy of KCI's standards of operation at their microfilming/digital imaging conversion facility, including work standards and quality control standards.

H. Indemnification:

1. Definitions: For purposes of indemnification requirements, the following terms shall have the meaning set forth below:
 - a. "KCI" means and includes KCI, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
 - b. "Loss" means any and all loss damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.
2. Indemnity: *Subject to the conditions and limitations of the Kansas Tort Claims Act, at K.S.A. 75-6101, et seq.,* for purposes of this Agreement KCI hereby agrees to indemnify, defend and hold harmless the City, its employees and agents from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of KCI. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that KCI's obligation hereunder shall not include amounts attributable to the fault or negligence of the City. Nothing in this section shall be deemed to impose liability on KCI to indemnify the City for loss when the City's negligence or other actionable fault is the sole cause of loss. With respect to the City's rights as set forth herein, KCI expressly waives all statutory

defenses, including, but not limited to, those under workers' compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of KCI to indemnify the City.

- I. To comply with the provisions of the Civil Rights Act of 1964 and the Kansas Act Against Discrimination and any subsequent revisions and additions to these statutes and shall not discriminate against any person in the performance of work under this Agreement because of race, color, religion, sex, disability, national origin, familial status, ancestry or age. (See Form DA-146a, Rev. 2-03)
- J. That the services to be performed by KCI under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without the written consent of the CITY.

ARTICLE III: GENERAL ADMINISTRATION

The parties hereto mutually agree:

- A. This Agreement shall be in force and effect for the period commencing on January 1, 2012, and ending December 31, 2012, subject to the terms and conditions herein contained or as amended by written agreement.
- B. It is further agreed that this Agreement and all agreements entered into under the provision of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- C. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 2-03), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof.

ARTICLE IV: TERMINATION

The parties hereto mutually agree:

- A. The CITY and KCI have the right to terminate this Agreement by giving at least thirty (30) days' written notice in the event the CITY or KCI determines this Agreement should be abandoned or indefinitely postponed; PROVIDED, however, that in any case, KCI shall be paid the amount due for the services rendered up to the time of termination, on the basis of the provision of this Agreement.
- B. The CITY has the right to terminate this Agreement at any time upon written notice to KCI in the event KCI fails to comply with all the terms and provisions of this Agreement or in any way defaults hereunder. KCI shall be paid the reasonable value of the services rendered to the date of termination; PROVIDED, that in the event of termination of this Agreement KCI shall not be paid more than that which it would receive under the terms of this Agreement for those services rendered to the date of termination.

Executed in triplicate the date first above written.

CITY OF OVERLAND PARK, KANSAS

KANSAS CORRECTIONAL INDUSTRIES

By: _____
Carl Gerlach, Mayor

By: _____
Brad Jurgensen, Director

ATTEST:

ATTEST:

Marian Cook City Clerk

APPROVED AS TO
FORM:

Stephen B. Horner
Senior Assistant City Attorney

Microfilm Converted to Digital Imaging Specifications and Services Required

The records to be microfilmed and/or converted to digital imaging for the Planning and Development Services Department, City of Overland Park Kansas, generally fall into four categories.

1. Address Files - These consist of mostly letter-size copies of correspondence and reports. Some documents may be up to 13 x 17 inches. Film size required: 16mm inserted in standard 7 3/8 x 3 3/8-inch four-line fiche. Addition of certain identifying (indexing) required on each fiche. Duplicate Diazo 16mm reel required.
2. Commercial Plans - These consist of architect/engineer type drawings ranging in size from 13 x 17 inches to 36 x 48 inches. Film size required: 35mm.
3. Planning Commission Plans - These are the same as #2 above.

All microfilming must comply with the density and resolution standards set forth in the following:

- Federal Standard 125D (Film Photograph & Film, Photographic, Processed for permanent records use);
- Kansas State Historical Society, K.S.A. 12-122 (Records Management Micrographics), K.S.A. 19-250 (Government Records Preservation Act), and K.S.A. 75-3506 (Agency Records Officers);
- American National Standards Institute (ANSI) PH1.28-198 1, or PH1 .41-198 1, PH4.8-1978, and PH1.43-1983;
- Association for Information and Image Management (AIIM) Standards, AIIM Standards are included in the Kansas State Historical Society, Local Government Records Management Manual, Appendix C - Micrographic Resources.

Additional specifications include:

- Master reels of 16mm and 35mm film must be silver halide safety based permanent record film.
- Each reel of film must include CITY listing of records at the beginning of the reel.
- Address files to be blipped and the CITY listing to be returned with Index Frame Number added.
- For documents to be converted to digital images, it is understood that KCI currently plans to first convert to microfilm and then convert to digital imaging. Provided, KCI may request City staff authorization to scan the documents directly to digital format.
- KCI will provide documents converted to digital imaging in a digital format approved by City staff.

QUOTE SHEET

(16mm)	1. Filming – cost per image	\$.07
	2. Jackets – cost each	\$.25
	3. Film insertion – cost each	\$.50
	4. Indexing – cost each fiche	\$.25
	5. Duplicate 16mm roll – (Diazo) cost each	\$ 12.00
Specification Books	1. Filming – cost per image (Original only-no duplication)	\$.07
35mm filmed and digitized to PDF/tree directory	(Includes up to 4 index fields)	\$.24
	CD or DVD	\$ 25.00
Film Conversion to digital images of KCI Film (prices vary for other film)		
	0-10,000 images	\$.10
	10,001-20,000 images	\$.095
	20,001 or more images	\$.09
	CD or DVD	\$ 25.00
	(Includes up to 4 index fields)	

Other Charges:

1. Pickups scheduled by the CITY as needed through the KCI Customer Service Department @ 913-727-3254. A shipping charge of **\$20.00 per pickup** will be payable to KCI. All documents will be picked up or delivered to the Microfilm Unit, Planning & Development Services Department, City Hall. The documents to be picked up will clearly be marked by the CITY. A CITY staff person shall generally be available to supervise the pickup.
2. Frame Indexing—frame numbers for each file to be placed onto CITY provided transmittals—with contract there will be no charge (normally there is a \$15.00/hr-by time clock charge for this service). Frames are to be typed onto the customer transmittal and emailed to the CITY at the completion of the project.

Notes:

1. All 16mm filming will be done at a 32:1 reduction ratio unless the CITY specifies otherwise.
2. Transmittals shall be submitted by the CITY to the Microfilm Division through the email process in a format that can be opened by various software programs.
3. Summary sheets are to be completed and emailed to the CITY at the completion of the project. (The summary sheets are a CITY-created document that is sent to KCI at the start of each project with the transmittals.)
4. 35mm digital imaging indexing to be done by Group number and then by Permit number in a multi-page PDF.
5. KCI is no longer able to accept documents containing the following information: 1) Date of Birth; 2) Social Security Number; or 3) Driver's License Number.

Signature: _____

Typed Name: Brad Jurgensen

Company Name: Kansas Correctional Industries

Address: Microfilm Division, PO Box 546, Norton, KS 67654

Phone/Fax Number: 785-877-6700

Fax 785-877-6613

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. 2-03), 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.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due to Lack of Funding Appropriation or Budget Rescission or Allotment:** 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. If, in the judgment of the Secretary of the state agency party, as a result of a budget rescission ordered by the Governor, or a budget allotment ordered by the Secretary of Administration, insufficient funds remain to support the function performed in this agreement and for payment of charges hereunder, State may terminate this agreement upon giving 30 days' written notice. In the event of termination due to any circumstance set forth above, Contractor shall have the right to take possession of any equipment provided State under the contract, upon the effective date of termination. State will pay to the contractor all regular contractual payments incurred up to the effective date of termination, plus contractual charges, if any, incidental to the return of any such equipment. Upon termination of the agreement by the State, title to any such equipment shall revert to the contractor upon the effective date of termination. 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:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred 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.

Parties to this contract understand that 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 shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit 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 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 shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lesser shall bear the risk of any loss or damage to any personal property in which vendor or lesser 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.

