

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
KANSAS WILDSCAPE, LLC
AND
KANSAS DEPARTMENT OF WILDLIFE, PARKS AND TOURISM**

This Memorandum of Understanding is entered into this 14th day of May, 2012, between the following parties: Kansas Wildscape, *hereinafter referred to as Wildscape*, located at 2500 W 6th St., Suite G, Lawrence, Kansas 66049 and the Kansas Department of Wildlife, Parks and Tourism, *hereinafter referred to as the Department*, located at 1020 S. Kansas, Ste. 200, Topeka Kansas 66612.

WHEREAS, Michael Burley, *hereinafter referred to as Landowner*, owns land in the NW ¼ of Section 2, Township 31 South, Range 2 East, Sumner Co., Kansas, *hereinafter referred to as Property*,

WHEREAS, the Department desires to develop safe vehicle and boat access to the Arkansas River and provide the basic facilities needed to allow the public to enjoy a productive, safe, and enjoyable boating-fishing experience,

WHEREAS, it is the statutory policy of the State of Kansas to provide and improve outdoor recreation and the Department is statutorily vested with certain powers necessary for the development of facilities for outdoor recreation available to the public and for uniform administration and enforcement of rules and regulation relating to fishing on water under its jurisdiction,

WHEREAS, Landowner has entered into an Agreement with the Department to allow public access on said Property for access to the Arkansas River, for a span of 10 years, beginning in 2012 and ending December 31 2021, *hereinafter referred to as the Belle Plain River Access Project*; and

WHEREAS, Wildscape is an authorized citizen-support organization by Kansas Statutes Annotated § 32-832 et. seq., with a mission to conserve land for the use and enjoyment of all.

NOW THEREFORE, in consideration of the premises and of the mutual covenants set forth below, the Parties agree as follows:

WILDSCAPE AGREES TO THE FOLLOWING:

1. To assist Department in making improvements to the Belle Plain River Access Project on Property by fencing the area, clearing the parking lot and performing minor bank and ditch work within one year of the effective date of this MOU.
2. Department shall grant to Wildscape an amount not to exceed a total of \$25,000.00 for the life of the Agreement between Landowner and Department (10 years) for said improvements. Said payment of \$25,000.00 shall be delivered upon the full execution of this MOU.
3. To submit to Department a quarterly progress report on Belle Plain Access Project upon the Property.
4. To submit to Department an annual audit of its financial records and accounts in such a manner and at such times as may be required by the Secretary of the Department.
5. That no use of such funding may be used for purposes of lobbying as defined by Kansas Statutes Annotated §46-225 and amendments thereto.

DEPARTMENT AGREES TO THE FOLLOWING:

1. To grant to an amount not to exceed \$25,000.00 for the life of the Agreement (10 years) between Landowner and Department to Wildscape for improvements made upon Property.
2. Payment of \$25,000.00 shall be delivered upon the full execution of this MOU.

BOTH PARTIES AGREE TO THE FOLLOWING:

1. Every provision of this MOU is subject to the laws of the State of Kansas.
2. Both the Department and Wildscape are entering into a joint Agreement for the purpose of providing outdoor recreational activities.
3. To cooperate in the recognition of each party's participation in this program.
4. This MOU may be amended only by written mutual agreement of both parties.
5. Either Party may terminate this MOU by providing written notification to the other party at least 30 days prior to expected termination. All remaining unused funding shall then be returned to the Department and an accounting of funds used shall then be provided to the Department.
6. The provisions found in Contractual Provisions Attachment (for DA-146a), identified as Exhibit "A" are hereby incorporated in this MOU.
7. Completion of the project shall be determined solely by the Department
8. Each party shall act in their individual capacity and not as agents, employees, partners, in joint venture, or as associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
9. Both the Department and Wildscape agree not to assign this MOU to any other entity, nor the respective rights or duties thereof.
10. Equal opportunity to participate in and benefit from programs described herein is available to all individuals without regard to their race, color, religion, national origin or ancestry, sex, age, or disability. Complaints of discrimination should be sent to the Office of the Secretary, Kansas Department of Wildlife, Parks & Tourism, 1020 S. Kansas, Suite 200, Topeka, Kansas 66612.
11. This MOU and its Attachments shall constitute the entire source of authority between the parties and shall control the relationship between the parties, regardless of any relationship between the parties.
12. Certify, by placement of signature to this MOU, that neither they nor any of their principals, subcontractors and suppliers used on this project are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in such an agreement by any Federal or State Department or Agency.
13. All parties signing this MOU hereby attest to authorization as a signatory for the respective entities involved.
14. In the event any of the provisions of this MOU are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of the MOU. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.
15. The Department's failure at any time to require strict performance by Wildscape of any of the provisions of this MOU shall not waive or diminish Department's right thereafter to demand strict compliance therewith or with any provision.

This MOU is effective upon the last signing by a duly authorized representative of the aforementioned parties.

Wildscape, L.L.C

By:

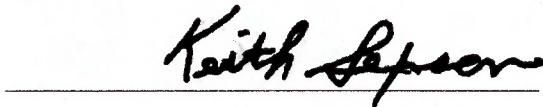


Date 5-11-2012

Title

Kansas Department of Wildlife, Parks and Tourism

By:



Date 5-14-12

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."