# Commonwealth of Kentucky

# MASTER AGREEMENT MODIFICATION

**IMPORTANT**

**Show Doc ID number on all packages, invoices and correspondence.**

| | | | |
|---|---|---|---|
| **Doc Description:** | Guardrail Cable Barrier Maint D2 | | |
| **Doc ID No:** | MA 605 1300000933 7 | **Proc Folder:** | 2818525 |
| **Procurement Type:** | Standard Services | **Record Date:** | |
| **Effective Date:** | 04/01/2013 | **Expiration Date:** | 03/31/2017 |
| **Issued By:** | JENNIFER HOUCHIN | **Cited Authority:** | FAP111-35-00-S |
| **Telephone:** | | | |

**Reason For Modification:** Modification to extend the expiration date for 60 days and expire on 5/31/2016. Extension is needed as changes are being made in the terms and conditions in regards to scrap metal. Once the changes have been mutually agreed upon the contract will be extended for the additional 10 months of the renewal period.

**VENDOR**

EDEN FENCE INC

150 MCCAMISH DR

ELIZABETHTOWN KY 42701
US

| Line | CL Description | Delivery Days | Quantity | Unit Issue | Unit Price | Contract Amt | Total Price |
|---|---|---|---|---|---|---|---|
| 1 | Vendor Rep | | 0.00 | EA | 0.00000 | 0.00 | 0.00 |

**Extended Description**

Vendor Rep: Rob Hughes
Vendor PH: 270-737-4199
Vendor Email: edenfence@hotmail.com

| Line | CL Description | Delivery Days | Quantity | Unit Issue | Unit Price | Contract Amt | Total Price |
|---|---|---|---|---|---|---|---|
| 2 | 2015 Catalog | | 0.00 | | 0.00000 | 0.00 | 0.00 |

**Extended Description**

| **Total Order Amount:** | **0.00** |
|---|---|

## Section 1—Specifications or Scope of Work

### 1.00—Specifications of Commodity and/or Service Requirements

This Master Agreement will be for guardrail and cable barrier maintenance and repairs for District 2. Cable barrier maintenance and / or repairs shall be for the Brifen, Gibraltar, or Trinity cable systems. All repair material and hardware shall be approved by the manufacturer as compatible with the system being repaired. The Contractor shall provide all equipment, labor, materials (unless provided by the Department), and incidentals necessary to repair guardrail or cable barrier systems.

Within 30 days of being awarded the contract, the Contractor shall submit documentation verifying that the Contractor has attended maintenance and repair training by the cable barrier system manufacturer ( Brifen, Gibraltar, or Trinity).

The 2012 Kentucky Transportation Cabinet, Department of Highways Standard Specifications for Road and Bridge Construction will apply in all instances unless modified by the requirements stated hereinafter. The term “Vendor” as applied to this contract shall be understood to be synonymous with the term “Contractor” as appears in the standard specifications. Article references are to the current standard specifications.

Go to the following site for 2012 Kentucky Transportation Cabinet, Department of Highways Standard Specifications for Road and Bridge Construction:
http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx

Go to the following site for KY Standard Drawings and Sepias:
http://transportation.ky.gov/Highway-Design/Pages/Standard-Drawings.aspx

Go to the following site for FAP 111-27-00:
http://finance.ky.gov/ourcabinet/caboff/ooc/policies.htm

Go to the following site for KRS 45A.190:
http://lrc.ky.gov/KRS/045A00/CHAPTER.HTM

### 1.01—Definitions

ASTM – American Society for Testing and Materials

AWPA - American Wood Preservers Association

### 1.02—Method of Measurement

Guardrail of each type will be measured in linear feet along the length of the rail erected between the pay limits for end treatments and/or end connections and/or terminal sections complete and accepted in the

final work. Nuts, bolts, washers, and any and all other hardware will not be measured for payment but will be considered incidental to both Vendor furnished and Department furnished guardrail installation.

Guardrail posts and offset blocks of each type will be measured in individual units complete and accepted in the final work.

Contrary to section 719.04.01, the Department will measure and pay for radius rail based on the linear feet.

Cable Barrier line posts, post bases, end posts, and end anchors will be measured in individual units complete and accepted in the final work.

For Cable Barrier repairs, when removing and replacing damaged posts, hardware, end terminals, etc, the vendor shall check the cable tension and re-tension as needed based on the manufacturer's recommendations. This work shall be incidental to the items being removed and replaced. A tension log form shall be completed showing the time, date, location, cable rope temperature (measured with an infrared thermometer), manufacturer's recommended tension (based on cable rope temperature), and final tension reading for each rope strand signed by the person performing the tension reading. This log shall be submitted with the invoice and also include the manufacturer's recommended tension chart.

Cable Barrier repairs using the line item "Repair / Replace Cable for Cable Barrier System (Vendor Furnish Cable)" shall include all labor and equipment needed to repair the cable system. The contractor shall furnish a sufficient crew and necessary equipment capable of making the necessary repairs, and the contractor shall be paid for each hour the item is used.

Embankment-in-place complete and accepted in the final work will be measured in cubic yards. Water used to obtain proper compaction, seeding and protection, and fertilizer will not be measured for separate payment but will be considered incidental to embankment-in-place.

Remove Concrete Bridge Post will be measured as each post being removed. Removing the Concrete Rail between posts shall be incidental to Remove Concrete Bridge Post.

Lane closures and shoulder closures accepted will be measured in individual units, one time for each work site. Barricades, warning signs and other traffic control devices will not be measured for separate payment but will be considered incidental to the lane and shoulder closures. Lane or shoulder closures will be measured for each installation only once regardless of the number of times it is set or reset and removed. No shoulder closure will be measured for payment at a location where lane closures is accepted and measured. Only one lane closure or shoulder closure will be paid for in any one mile segment of road per work site.

**1.03—Materials Specifications**

Steel beam guardrail accessories and components shall meet the requirements of Section 814.02 and shall comply with the AASHTO M-180 Class A Type 2, AASHTO M 232, and Standard Drawings RBR -001-011 (see Sepia 12, excluding note 7) and RBR-005-010, Guardrail shall be furnished by the Vendor or by the Department. Contrary to Sepia 12, 25ft lengths of "W" beam guardrail sections will not be allowed.

Guardrail posts shall comply with Section 814.04 and Standard Drawings RBR-001-11, RBR-015-04 and RBR-016-04, except as provided herein.

Steel post shall be wide flange shape W6 x 8.5 or W6 x 9 conforming to Section 814.04.01, AASHTO M 183, and AASHTO M 111 or at vendors option a W6 x 8.5 structural shape manufactured by the electric-resistance welding process for coils, meeting the requirements of ASTM A 769 Grade 36 or Grade 40.

Nominal dimensions and manufacturing tolerances being the same as for a W6 x 8.5 rolled section, galvanized in accordance with AASHTO M 111. All welding, drilling or punching shall be completed before galvanizing. Steel Posts with anchor plates shall be 24 ½" long (including the plate thickness) or as directed by Engineer to meet site conditions.

Unless used for Corten Guardrail, Timber Guardrail Posts shall be square sawed to nominal dimensions 6" x 8" conforming to Section 814.04.02, WPA C14 and AWPA C14. Timber Guardrail Posts for Corten guardrail shall be round and conform to the Standard Drawings and Section 814.04.02 of the Standard Specifications.

Offset blocks shall be wood conforming to Section 814.05 and 814.04.01 or 814.04.02 as applicable.

Terminal sections shall conform to Section 814.03 and AASHTO M 180 Class A Type 2 and Standard Drawing RBR.010-05.

Guardrail Delineators shall be supplied and installed according to Section 830.02.01 and Sepia 002.

End Treatments shall conform to Section 814.06 (and shall be in same class and type as required for the guardrail to which they are attached) and galvanized in accordance with AASHTO M 111 or AASHTO M 232 as applicable, and comply with Standard Drawings RBR-020-04, RBR-025-04 (see Sepia 7), RBR-030-04, RBR-035-09, and RBR-050-06 as applicable.

Barricades, warning signs, pavement markings and other traffic control devices shall conform to the Manual on Uniform Traffic Control Devices Current Edition, as applicable.

Guardrail Connectors to Bridge End shall conform to Current Standard Drawings RBB-001-007, R BB-002-08, RBB-010-04, RBC-001-10, RBC-002-02, RBC-003-07, RBC-004-06, RBC-100-03, and RBC-110-10, as applicable.

Energy Absorption Devices (crash cushions) shall conform to Current Standard Drawings RBE-040-09, RBE-060-13, RBE-065-06, RBE-070-05, RBE-100-09, RBE-200-05, and RBE-205-05, as applicable.

Cable Barrier replacement parts shall be approved by the manufacturer (Brifen, Gibraltar, or Trinity) of the system being repaired.

Embankment in place shall be of acceptable materials from sources approved by the Engineer. No frozen materials, stumps, logs, roots, perishable materials, or rubble shall be placed on any embankment. No stone or stone fragment greater than 4 inches in any dimension shall be placed within 12" of the finished subgrade elevation. No embankment materials shall be obtained by excavation within the

right-of-way unless specifically approved by the Engineer.

Materials for seeding and protection shall meet the requirements of Section 827 as applicable except that pretesting of these materials will not be necessary but they shall be approved before use.

The guardrail posts shall be of the same type material as those they replace or of the same type material as other existing installations on the same project unless otherwise directed by the Engineer. The Engineer shall indicate on the purchase order the type required. However, concrete posts shall not be required.

**1.04—Control and Acceptance of Vendor Provided Materials**

All materials will be accepted on the basis of samples, tests, inspections and certifications required by and in conformance with Sections 106.01, 106.02, 106.03, 106.05, 106.06 and 106.07 except as provided herein.

Materials shall be stored by the contractor so as to ensure preservation of their quality and fitness for the work. Stored materials shall be made readily available for inspections. No portion of the right-of-way may be used for material storage purposes or for the placing of the Vendor's plant and/or equipment except when work is actively in progress.

The Department reserves the right to test the completed work of individual materials at any time prior to final acceptance for payment.

Materials from stock that have been accepted for use on other projects let to construction by the Department may be used without further testing if the material specifications are equal or better and if the approval period, if any, has not expired.

Reasonable amounts of the Vendor’s stock may be sampled, tested, certified and approved for use prior to issuance of purchase order(s) in order to enable the Vendor to comply with the delivery requirements herein.

All treated timber may be inspected by the Department of Highways or its authorized representative prior to acceptance for payment. At the option of the Department, this inspection may be at the treating plant or at the point of delivery. When the Department elects to inspect the timber at the destination, the Vendor may hire the services of an independent timber inspection company (subject to prior approval of the Department) to provide for inspection at the treating plant which allows the material to be shipped pre-inspected.

The Vendor shall contact the Division of Materials, Kentucky Department of Highways, Frankfort, KY 40622 (Phone (502) 564-3160) at least 15 days prior to commencing an order for instructions on inspection procedures.

**1.05—Construction Requirements**

The work shall consist of removing guardrail, realigning guardrail, and furnishing and erecting steel

W-beam guardrail, steel offset blocks, steel guardrail posts, timber guardrail posts, wood offset blocks, each type end treatment, the terminal sections, and each type guardrail connector and embankments in accordance with the Kentucky Transportation Cabinet, Department of Highways 2012 Standard Specifications Section 719 with applicable provisions of these specifications, and with the details shown on the applicable Standard Drawings and Sepias. The Vendor shall furnish all labor, materials (unless supplied by the Department), equipment, tools, transportation, supplies and incidentals (including but not limited to nuts, bolts, washers, etc.) required to complete the work in accordance with the current standard drawings, current specifications and terms of this contract.

The guardrail posts, offset blocks, terminals sections, end treatments, connections and embankments shall be constructed to the lines, grades and elevations shown on the standard drawings or as designated by the Engineer. Unless otherwise directed, the guardrail shall be constructed at the proper height as shown in the Standard Drawings or by any method approved by the Engineer which allows the construction of the guardrail to the true gradient and prevents apparent sags. The guardrail height should match the height of the existing guardrail, but in no instance should the height of the guardrail be less than 27 inches.

Cable barrier repairs shall be made in accordance with the manufacturer's specifications.

Embankment required for proper installation of Type 3, Type 4A, Type 7 or other end treatments shall be constructed where required in accordance with Section 207 of the Standard Specifications to the lines, grades, elevations and cross sections directed by the Engineer.

Embankments, excavations and areas constructed by or disturbed by the Vendor shall receive permanent seeding and protection as soon as practicable in the judgment of the Engineer in conformance with Section 212 except as provided herein. Seed mixture No. II in conformance with Section 212.03.03 shall be sown at the rate of 3 pounds per 1000 square feet. In residential or improved areas the Engineer may require seed mixture No. I in conformance with Section 212.03.03 in lieu of mixture No. II. Agricultural limestone is not required. Fertilizer shall be 10-10-10 analysis applied at the rate of 12 pounds per 1000 square feet.

Existing guardrail components which are not to be reset shall be removed in an acceptable manner to the Engineer and may be stockpiled on the right-of-way at sites approved by the Engineer. Stockpiling on the shoulders and in the median shall not be permitted. The nuts, bolts and washers shall become the property of the Vendor. All other items in the system shall remain the property of the Department. During or upon completion of the work, all guardrail and cable barrier components which are not reset shall be delivered to the **County Maintenance** facility specified by the District. Reusable and scrap material shall be separated and placed at locations on the lot designated by the Engineer.

Lane closures and shoulder closures shall be in conformance with the Manual on Uniform Traffic Control Devices, Current Edition.

In all instances, the Contractor shall be responsible for repairing any damage done to underground facilities such as, but not limit to, electrical conduit, perforated pipe, culvert pipe, drainage structures, etc., as the result of driving or pulling of guardrail posts. If electrical service is damaged, it shall be repaired immediately. Dry sand shall be used to fill all voids left as the result of pulling existing guardrail post and as directed by the Engineer to fill voids around posts as a result of realigning the guardrail and/or posts. The cost of the work mentioned in this paragraph shall be incidental to affected bid items.

*Before You Dig:* The Contractor shall be responsible for all requirements and conformance with the Underground Facility Damage Prevention Act of 1994. The Contractor will be responsible for locating any utilities on the project. All underground utilities shall be located prior to construction. Any utilities disturbed or damaged as a result of the Contractor's operations will be repaired to the satisfaction of the utility owner at the Contractor's expense. The Contractor is advised that he can call (800) 752-6007 a minimum of 2 working days prior to excavation for information on the location of some but not necessarily all underground utilities.

When either new guardrail installations or guardrail to be reset is installed under traffic, the blunt ends shall not be left exposed where they would be hazardous to the public. When it is not practical to complete the construction of the permanent end treatments first, the Engineer may require a temporary end by connecting at least 25 feet of rail to the last post, and by slightly flaring and burying the end of the rail completely into the existing shoulder. If left overnight, an approved safety drum with vertical panels as detailed in the MUTCD, current edition shall be placed in advance of the guardrail end and maintained during use. The cost of the temporary end, including the drum and panel, shall be included in the unit price bid for either new guardrail or reset rail.

The Contractor shall restrict guardrail or cable barrier operations to one mile per side and at no time will he conduct his operations in a manner that will hamper the flow of traffic on both sides of the traveled way at the same time. No fill shall be left unguarded overnight without use of proper warning devices.

Field punching or drilling of holes may be necessary and shall be incidental. The edges of all holes punched in the existing rail or rail furnished by the Department, posts that are to be reused and all scratches or marred areas in completed installations shall be painted with 2 coats of zinc dust-zinc oxide paint conforming to the current issue of Federal Specification TT-P-641.

When guardrail is to be realigned either vertically or horizontally, voids around posts shall be compacted as directed by the Engineer.

Guardrail Cribbing shall be installed at locations designated by the Engineer. It shall be installed such that proper line and grade will be maintained until back fill can be accomplished by the Department.

Type 7 end treatments shall not be installed or replaced on the National Highway System. Type 4 end treatments and Type 6 end treatments shall not be installed or replaced on any road system.

**1.06—Special Notes for Bridge Guardrail Installation**

See Standard Drawing BHS-007-06 for information pertaining to the placement of Steel "W" beam Guardrail (single face-A) at the bridge ends described in the Bridge Guardrail Detail (Case I-A), Bridge Guardrail Detail (Case I), Bridge Guardrail Detail (Case I-B), or Bridge Guardrail Detail (Case II).

**1.07—Notes**

IF THE FOLLOWING CONDITIONS EXIST, CASE I-A SHALL APPLY:

If the dimension from the top of the existing riding surface to the top of the curb is greater than 2" (curb height = D), the surface of the bridge shall not be paved flush to the top of the curb.
If the curb width is less than 18", Case I-A shall apply.
If the clear distance between the faces of the guardrail is less than 20', Case I-A shall apply.
Pre-cast concrete bridge rail block shall be required at the ends of the bridge, which face opposing traffic.

**1.08–Insurance**

Evidence will be furnished to the Transportation Cabinet that public (General) liability insurance is carried on the above equipment and their operators in the following amounts:

EACH OCCURRENCE:
Property $1,000,000.00
Personal $1,000,000.00

And worker's compensation insurance in accordance with the requirements of KRS 45A.480 and KRS 342.

Vendor must submit an ACORD Certificate with the certificate holder listed as:

KYTC Div of Purchases
ATTN: Jennifer Houchin
200 Mero St, 4th floor east
Frankfort, KY 40622

**1.09 – Storage of Guardrail and Cable Barrier Components**

At the District's discretion, the Contractor shall be responsible for providing a secure storage site within the respective District for the guardrail and cable barrier materials to be used as part of this master agreement. If the District chooses to have the Contractor provide a secure storage site, following award of the Contract, the Contractor shall order all guardrail, radius guardrail, 6 & 9 foot posts, Type 4 offset blocks, and cable barrier parts that will be used for guardrail and cable barrier repairs from the District Office. The Contractor is required to order these parts via the attached order form. These materials will be delivered to the Contractor's storage site by the Department. The Contractor shall provide any equipment and labor necessary to unload and handle the material upon delivery. If the Contractor has more than one contract for Guardrail and Cable Barrier Maintenance, the Contractor is required to keep each District's stock separated and clearly marked. As part of this process, the Department will take inventory of all materials provided to the Contractor at the time of delivery. The Department will keep track of the inventory by deducting all materials used from the inventory based on the Department's completed delivery orders. During the contract year, the Department will inventory **monthly** and compare to the quantities of repairs completed. Any discrepancy in materials on hand shall be reimbursed by deducting the replacement cost from outstanding invoices. The replacement cost will be determined using the current prices on the Department's Guardrail Components contract. Storage and transportation of the repair materials shall be incidental to the contract.

## Section 2—Terms and Conditions of the Master Agreement

### 2.00—Scope of the Contract

The KYTC Division of Purchases issues this Master Agreement for:

**Guardrail and Cable Barrier Maintenance District 2**

### 2.01—Contract Components and Order of Precedence

The Commonwealth's acceptance of the offer indicated by the issuance of an Award by the KYTC Division of Purchases shall create a valid Master Agreement consisting of the following:

1. The written Master Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. Any provisions of the Solicitation and all attachments thereto;
4. The Bidder's response to the Solicitation, and
5. The Kentucky Revised Statutes KRS 45A.

### 2.02—Initial Contract Period

The Master Agreement will be effective no earlier than April 1, 2013 and expire March 31, 2014.

### 2.03—Optional Renewal Period

This Master Agreement may be extended at the completion of the initial contract period for **3** additional one-year periods. This extension must have the written approval of the vendor and the KYTC Division of Purchases. The Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The vendor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

Prevailing wage rates will be updated at the time of renewal.

### 2.04—Divisions/Agencies to Be Served

This contract shall be for use by the following Divisions/Agencies of the Kentucky Transportation Cabinet:

**Division of Maintenance and District 2**

No shipments or services are authorized until an official Delivery Order has been fully processed by an authorized agency.

**2.05—Quantity Basis of Contract**

This Master Agreement has no guarantee of any specific quantity, and the State is obligated only to buy that quantity which is needed by its agencies.

2.06—Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to acquire large requirements through other competitive processes.

2.07—Basis of Price Revisions

PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by the Master Agreement shall be firm for the contract period subject to the following:

A. Price Increases: A price increase will not be allowed during the first six (6) months of the contract. Only one price increase will be allowed during the contract period. The price increase must be based on industry wide price changes. The contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The KYTC Division of Purchases may request additional information or justification. If the price increase is denied, the contract holder may withdraw from the contract without prejudice upon written notice and approval by the KYTC Division of Purchases. Notice of withdrawal must be provided a minimum of forty-five (45) days prior to the effective date.

B. Price Decreases: The contract price shall be reduced to reflect any industry wide price decreases. The contract holder is required to furnish the KYTC Division of Purchases with notice of any price decreases as soon as such decreases are available.

C. Extended Contract Periods: If the contract provides for an optional renewal period, a price adjustment may be granted at the time the contract is renewed, subject to price increase justification as required “A. Price Increases”. One (1) additional price increase may be granted during the extended contract period. This price increase will not be allowed during the first six (6) months of the extended contract period and will be subject to the conditions in “A” above.

**2.08—Addition or Deletion of Items or Services**

The KYTC Division of Purchases reserves the right to add new and similar items, with the consent of the vendor, to the contract. If an addition is agreeable to both parties, the KYTC Division of Purchases will

issue a Modification. Until such time as the vendor receives a Modification, the vendor shall not accept Delivery Orders from any agency referencing such items or services.

**2.09—Changes and Modifications to the Contract**

No modification or change of any provision in the Master Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Vendor and the KYTC Division of Purchases, and incorporated as a modification to the contract prior to the effective date of such modification or change pursuant to KRS 45A.210.

If the vendor believes modifications are necessary, he/she may request approval of the KYTC Division of Purchases. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

**2.10— Reduction in Contract Worker Hours/Employee Furlough**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document. The reduction of hours may be applicable to those contract workers that provide a service in state government buildings on a regularly scheduled basis, such as janitorial, security guard, mailing services, and food services. These services will be reduced in hours only in those circumstances where the buildings will be closed. A notification will be sent to the contract holder in advance of any scheduled reduction in contract hours.

**2.11-Equipment**

All equipment must be new and current model(s). The Commonwealth recognizes the rapid advancement of technology. If the vendor can provide new equipment of advanced technology after the award of the contract, the Commonwealth and the bidder may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

**2.12—Basis of Shipment**

All shipments shall be F.O.B. Destination to the receiving agency. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency. The responsibility for filing freight claims lies with the vendor.

**2.13—Notices**

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Master Agreement shall be in writing.

After the Award, all programmatic communications are to be made to the Agency Contact Person listed

below with a copy to the Division of Purchases.

TJ Gilpin
Division of Maintenance
Kentucky Transportation Cabinet
Phone: 502-564-4556
E-mail: Thomas.Gilpin@ky.gov

With copy to:

Jennifer Houchin, CPPB
Division of Purchases
Kentucky Transportation Cabinet
Phone: 502-564-4630
E-mail: Jennifer.Houchin@ky.gov

After the Award, all communications of a contractual or legal nature are to be made to the KYTC Division of Purchases.

**2.14—Deliveries**

*Repair shall begin within 5 calendar days following request from Engineer or authorized representative. Should the vendor fail to begin work within the required days, they further agree and authorize the Commonwealth to assess and deduct a* ***$500 per calendar day*** *penalty for every day they fail to perform as specified. Additionally, once the initial work has started, the vendor agrees to work* ***continuously*** *(full-time work shifts daily, excluding weekends and holidays) until all work orders are complete. Should the vendor fail to work continuously, they further agree to a* ***$500 per calendar day*** *penalty for every day the vendor fails to perform as specified.*

Days missed due to adverse weather must be approved by the Engineer.

**The Engineer may require repair to begin prior to the 5 calendar days and/or require work to be continued during weekends, holidays, night time hours, and other than normal working hours and/or restrict work to certain days of the week or hours of the day.**

The Engineer may request work to be done on an emergency basis. Work done on an emergency basis shall begin within 24 hours of request or as directed by the Engineer. When emergency work is required, penalties are based on calendar days, not work days as defined by the KY Standard Specifications.

Delivery and repair shall be made at any point in the indicated county in the District as directed by the Engineer and shown on the Work Order. All repair requests will be reported to the Contractor by the District Office (or designee). The Contractor shall provide a contact name, phone number, and fax number or email address where all repair requests can be reported.

A faxed copy or email of a Work Order to the Contractor will be the official notification of the repair request. The fax or email will specify the type of repair work required, including the approximate location

(mile point) of work and approximate bid items needed to complete the repair when known.

When multiple work orders are submitted or work orders for more than one guardrail or cable barrier repair project have been issued, the Engineer may determine the priority to be given to each work order.

The Contractor shall notify the District Representative of the repair work date and time, so that the District may inspect the work.

The Vendor's shipments and hauling equipment shall not exceed established limits.

Guardrail, posts, guardrail end treatments, terminal section, bridge end connectors, offset blocks, line posts, and end posts may be furnished by the Vendor or by the Department as directed by the Engineer. If material is supplied by the Department, the vendor is required to get an Inventory Form signed and dated by District personnel. The form shall show what items were removed/returned to the Maintenance Lot, quantity, location for work being done, and the person picking up/returning the items. Failure to obtain a signed Inventory Form may result in non-payment of the invoice for that work order. Inventory Forms are to be provided by District personnel. The Vendor is only authorized to remove/return materials from the Maintenance Lot during normal business hours. However, in the event of an emergency repair, District personnel may arrange to meet the vendor at the lot during non-traditional business hours. The Vendor shall load and deliver the guardrail to the work site using Vendor's labor and equipment.

A Vendor unable to fulfill their contract for a specific period of the time shall immediately notify the Chief District Engineer and the Transportation Cabinet, Division of Purchases in writing. The letter should specify the inclusive dates of this period.

**2.15—Inspection**

All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the vendor's expense.

**2.16—Invoices**

Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

a. Contract and order number;

b. Item numbers;

c. Description of supplies or services;

d. Sizes;

e. Quantities

f. Unit prices; and

g. Extended totals.

**2.17—Payments**

The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. **Unless otherwise specified, payment will not be made for partial deliveries accepted.** Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

Payment shall be full compensation for all materials, equipment and labor necessary to complete the work.

No direct payment will be made for nuts, bolts, washers, backup plates, and incidental hardware for either vendor or Department supplied guardrail, posts and component items.

Unless otherwise specified, no direct payment will be made for caps, spacers, pegs, sleeve covers, sleeves, end anchor connectors, turnbuckles, reflectors, or other incidental hardware for cable barrier repairs.

No direct payment will be made for water to obtain proper compaction of embankments.

No direct payment will be made for barricades, warning signs and traffic control devices for maintaining and controlling traffic.

No direct payment will be made for mobilization or demobilization.

No direct payment will be made for overhaul of material for embankments.

No direct payment will be made for seeding and protection or fertilizer.

No direct payment for replacement of steel reinforcement in damaged sections of curbs and barrier walls requiring concrete Class AA.

2.19—Subcontracts

The vendor shall notify the Commonwealth of any planned use of subcontractors in regards to the resulting contract. If the KYTC Division of Purchases is provided evidence of the vendor making such an arrangement without submitting the proper information prior to use of the subcontractor, the contract may be cancelled immediately.

This provision will not be taken as requiring the approval of contracts of employment between the vendor and their personnel.

All payments will be made directly to the contracted vendor. It is the vendor's responsibility to make payment to the subcontract. Payments shall not be made to the subcontractor by the Commonwealth. Subcontractors having nonpayment issues that could not be resolved with the Vendor, should report in detail these incidents to the buyer of record for this solicitation.

The Vendor shall ensure that all contractors or subcontractors comply with all applicable Federal, State, and Local laws, regulation, mandates, and terms of this solicitation and resulting contract.

Additionally, the Vendor shall not contract with any contractor or subcontractor that utilizes the services of illegal immigrants. Attached is the required affidavit regarding contractor or subcontractor employees.

The vendor is responsible for supplying the subcontractor with a copy of any applicable prevailing wage rates and the terms and conditions of the solicitation.

**2.20-Service Performance**

All services performed under contract shall be in accordance with the terms and conditions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

Deviations of services performed will not be made without the written approval of the KYTC Division of Purchases. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. If such problems and/or disagreements cannot be resolved they should be referred to the KYTC Division of Purchases for mediation.

2.21—Assignment
The vendor shall not assign this Master Agreement in whole or in part to another vendor at any time during the initial or optional renewal terms of the contract, without the consent, guidance and approval of the Commonwealth. Any assignment hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Any purported assignment without this consent shall be null and void.

**2.22—Termination of Contracts**

A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

**2.23– Endorsements**

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

**2.24-Registration with the Secretary of State by a Foreign Entity**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.
**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at https://secure.kentucky.gov/sos/ftbr/welcome.aspx

**2.25–EEO ACT**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding $500,000. The Contractor shall comply with all terms and conditions of the Act, if applicable.

1. Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.

2. Vendors/Contractors must submit the following documents in accordance with the requirements of the solicitation—EEO-1: Employer Information Report, Affidavit of Intent to Comply and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.

3. Vendors/Contractors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's e-Procurement Web page under Finance Forms at the heading Procurement at the following address: http://finance.ky.gov/SERVICES/FORMS/Pages/default.aspx

4. Vendors/Contractors must advise each subcontractor/subvendor—with a subcontract of more than $500,000—of the subcontractor's obligation to comply with the KY EEO Act.

Further, Vendors/Contractors are responsible for compiling EEO documentation from their subcontractors/subvendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance. (Note: contracts below the second tier are exempt from EEO reporting.)

5. Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. Further, alternate versions of the required documents will not be accepted or processed.

6. Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds $500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

7. All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: Finance.ContractCompliance@ky.gov or via telephone: (502) 564-2874.

**2.26—Prevailing Wage**

If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

**2.27—Kentucky Sales and Use Taxes**

Sales of tangible personal property or services to the State of Kentucky and its agencies are not subject to state sales or use taxes.

**2.28—Extension Period**

This contract may be extended at the termination of all contract renewal periods for additional time not to exceed **90 days**. This extension must be accompanied by the written approval of the vendor and the Division of Purchases

**2.29—Extending Master Agreement To Other Agencies**

The Division of Purchases reserves the right, with the consent of the vendor, to offer this master agreement to other state agencies or political subdivisions who may have need for the product (s).

## 2.30-Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

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