

MEMORANDUM OF AGREEMENT

This Agreement is entered into as of 5/15/06, at Manhattan, Kansas between Kansas State University hereinafter referred to as the "University", and Golden Valley Hardscapes, 3072 380th St., Story City, IA 50248 hereinafter referred to as the "Contractor".

WITNESSETH THAT the purpose of this agreement is to outline and describe the responsibilities to be assumed by the contracting parties in connection with the below referenced Invitation for Bid.

Part 1. Duration:

This agreement is for one (1) year period from 9/1/06 through 8/31/07.

Part 2. The Parties Hereto Agree That:

a. The University will provide:

(1) Payment for product/services received.

b. The Contractor will provide:

(1) Product/services as specified under Contract IFB 40121.

Part 3. Payment for Services:

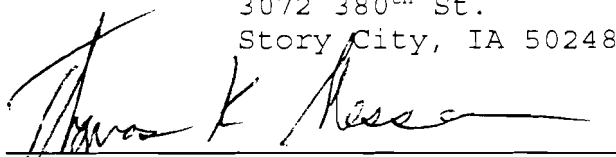
Payment will be made in regular routine upon receipt by the University of the Contractor's invoice in duplicate.

Part 4. Kansas Contractual Provisions:

The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

In witness whereof the parties hereto have signed this agreement as of the day and year first above written.

Contractor: Golden Valley Hardscapes
3072 380th St.
Story City, IA 50248



(Signature)

Thomas K. Messer

(Print Name)

Kansas State University
Controller/Purchasing
Manhattan, KS 66506



Carla K. Bishop
Director of Purchasing

KANSAS STATE UNIVERSITY
PURCHASING OFFICE
21 ANDERSON HALL
MANHATTAN, KS 66506
PHONE 785-532-6214 FAX 785-532-5577

CONTRACT I.F.B. NO. 40121
P.R. NO. NA
REPLACES CONTRACT NO. 40085
DATE MAILED 4/29/05

CLOSING DATE, 2:00 PM 5/25/05

PROCUREMENT OFFICER:
Chris Dekat, CPPB

TELEPHONE: 785-532-5469
E-MAIL: cidekat@ksu.edu

NOTICE TO VENDORS

Invitations are extended for bids on the attached Invitation for Bid.

ITEM: Bulk Wood Shavings

USING DEPARTMENT: Kansas Artificial Breeding Unit / Animal Sciences

PERIOD OF CONTRACT: 1 year (9/1/05-8/31/06) with 1 year renewal option

GUARANTEE: NONE REQUIRED

Scope of Request:

To provide bulk wood shavings as ordered per the following specifications.

READ THIS INVITATION CAREFULLY

Failure to abide by all of the conditions of this Invitation may result in the rejection of a bid. Inquiries about this Invitation should indicate the contract number and be directed to the procurement officer. Return in a sealed envelope or other container only the signature and bids forms not later than the closing date indicated above. Retain the remaining documents for reference.

MEMORANDUM OF AGREEMENT

This Agreement is entered into as of 6/10/05, at Manhattan, Kansas between Kansas State University hereinafter referred to as the "University", and Westwind Logistics, LLC., 3068 380th St. Story City, IA 50248, hereinafter referred to as the "Contractor".

WITNESSETH THAT the purpose of this agreement is to outline and describe the responsibilities to be assumed by the contracting parties in connection with the deferred compensation plan.

Part 1. Duration:

This agreement is for period of one (1) year from 9/1/05 through 8/31/06.

Part 2. The Parties Hereto Agree That:

a. The University will provide:

(1) Payment for product/services received.

b. The Contractor will provide:

(1) Product/services as specified under Contract IFB 40121.

Part 3. Payment for Services:

Payment will be made in regular routine upon receipt by the University of the Contractor's invoice in duplicate.

Part 4. Kansas Contractual Provisions:

The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

In witness whereof the parties hereto have signed this agreement as of the day and year first above written.

Contractor: Westwind Logistics LLC.
3068 380th St.
Story City, IA 50248

Kansas State University
Controller/Purchasing
Manhattan, KS 66506

Cara Swenson

(Signature)

Cara Swenson

(Print Name)

Carla K Bishop

Carla K. Bishop
Director of Purchasing

Χοντραχι ΡΦΘ #40121 Παγε Β

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Closing Date 5/25/05
Item Bulk Wood Shavings
Kansas State University

SIGNATURE SHEET

We submit a proposal to furnish requirements during the contract period in accordance with the specifications and Schedule of Supplies.

LEGAL NAME OF PERSON, FIRM OR CORPORATION Westwind Logistics, LLC
TELEPHONE (TOLL FREE) NUMBER 866-455-1086 FAX NUMBER 877-887-5557
ADDRESS 3068 380th St
CITY & STATE Story City, IA ZIP CODE 50248
SS OR FEIN NUMBER 30-0218768
SIGNATURE Cara Swenson
TYPED NAME OF SIGNATURE Cara Swenson
TITLE Bedding Sales
DATE 6/10/05

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

ADDRESS PO Box 96
CITY & STATE Randall IA ZIP CODE 50231
TELEPHONE (TOLL FREE) NUMBER same FAX NUMBER same
E-MAIL cara.swenson@westwindlogistics.net

Χοντραχι ΡΟΘ #40121 Παγς 9

BID FORM

<u>Estimated Usage/Unit</u>	<u>Description</u>	<u>Per Ton Price</u>
275 Ton /yearly	Bulk Wood Shavings	\$ <u>49.75/ton</u>
100 ton - Kansas Artificial Breeding Unit		49% fuel surcharge
175 ton - Animal Sciences & Industries		
	Freight	\$ <u>1.68</u> Per loaded mile
	Minimum Order Size:	<u>18</u> Tons

Specifications:

Bulk Wood Shavings shall not have more than 18% moisture content, manufactured from soft wood such as white pine, etc. No hardwood shavings will be accepted. Shavings shall be less than 40% sawdust, and must be free from all sticks, bark, and splinters. Materials must be suitable for the bedding of cattle and horses of all ages.

Samples may be required from vendors by using departments prior to contract award.

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

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. 1-01), 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 1st day of September, 2005.

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:** 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 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:** 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. 75-8403), 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 lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor 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 inalienable 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."