NEGOTIATED INDIRECT COST RATE AGREEMENT

NON-FEDERAL ENTITY:
Kansas Department of Commerce
1000 S.W. Jackson St., Suite 100
Topeka, KS 66612-1354

EIN: 48-1124839

DATE: 5/19/2022
FILE REFERENCE: This replaces the agreement dated 3/24/2021

The indirect cost rate(s) contained in this Agreement are for use on grants, contracts, and other agreements with the Federal Government. This Agreement was negotiated by the **Kansas Department of Commerce** (non-Federal entity) and the **U.S. Department of Labor** in accordance with the authority contained in the Federal Acquisition Regulation (FAR) for commercial entities, or Title 2 of the Code of Federal Regulations, Part 200 for nonprofit and state/local entities. This Agreement is subject to the limitations in Section II, A, below.

When applicable, the rates presented in this Agreement may only be applied to: (1) cost-reimbursement contracts and (2) actual costs for materials in time-and-materials (T&M) contracts. Any indirect rates for labor costs in T&M, labor-hour and fixed-price contracts must be negotiated with the Contracting Officer during pre-award in accordance with FAR Part 15.404-1(c).

SECTION I: RATES

TYPE	APPROVAL	FROM	TO	RATE	BASE	LOCATION	APPLY TO
Indirect	Fixed	07/01/2022	06/30/2023	13.93%	SW-1	Loc-1	AP-1

SEE SPECIAL REMARKS)

BASE
SW-1: Total direct salaries and wages including vacation, holiday, sick pay, other paid absences, and all applicable fringe benefits.

LOCATION
Loc-1: All Locations

APPLY TO
AP-1: All Programs

TREATMENT OF FRINGE BENEFITS: Fringe benefits are specifically identified to each employee and/or are charged individually as direct or indirect cost (as applicable). See Special Remarks section of this Agreement for more details.

TREATMENT OF PAID ABSENCES: Vacation, holiday, sick leave pay and other paid absences are included in salaries and wages and are claimed on grants, contracts and other agreements as part of the normal cost for salaries and wages. Separate claims are not made for the cost of these paid absences.

SECTION II: GENERAL

A. **LIMITATIONS:**

Use of the rate(s) contained in the Agreement is subject to all statutory or administrative limitations and is applicable to a given Federal award or contract only to the extent that funds are available. Acceptance of the rate(s) agreed to herein is predicated upon the following conditions:

1. No costs other than those incurred by the non-Federal entity or contractor were included in its indirect cost pool as finally accepted and that such incurred costs are legal obligations of the non-Federal entity and allowable under the governing cost principles.

2. The same costs that have been treated as indirect costs have not been claimed as direct costs.

3. Similar types of costs have been accorded consistent treatment.

4. The information provided by the non-Federal entity or contractor which was used as a basis for acceptance of the rate(s) agreed to herein is not subsequently found to be materially inaccurate by the Federal government. In such situations, the rate(s) may be subject to renegotiation at the discretion of the Federal government.

5. The rates cited in this Agreement are subject to audit.

6. Indirect costs charged to Federal grants/contracts by means other than the rate(s) cited in this Agreement should be adjusted to the applicable rate(s) cited herein and be applied to the appropriate base to identify the proper amount of indirect costs allocable to the program.

7. Contracts/grants providing for ceilings as to the indirect cost rate(s) or amount(s) which are indicated in Section I above, will be subject to the ceilings stipulated in the contract or grant agreements. The ceiling rate or the rate(s) cited in this Agreement, whichever is lower, will be used to determine the maximum allowable indirect cost on the contract or grant agreement.

8. Administrative costs consist of all Direct and Indirect costs associated with the management of a non-Federal entity's programs. Non-Federal entities should refer to their contracts/grants terms and specific program legislation for the applicable definition of Administrative Costs and any related limitations.

B. **ACCOUNTING CHANGES:**

This agreement is based on the accounting system purported by the non-Federal entity or contractor to be in effect during the Agreement period. Changes to the method of accounting for costs which affect the amount of reimbursement resulting from the use of this Agreement require prior approval from the Cost & Price Determination Division (CPDD). Such changes include, but are not limited to changes in the charging of a particular type of cost from indirect to direct. Failure to obtain approval may result in cost disallowances.

C. NOTIFICATION TO FEDERAL AGENCIES:

A copy of this document is to be provided by the non-Federal entity or contractor to other Federal funding sources as a means of notifying them of the Agreement contained herein.

D. DEFINITION OF RATES:

1. Final rate means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

2. Provisional rate or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

3. Predetermined rate means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

4. Fixed rate means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

   The Special Remarks section of this agreement may include a carry forward amount(s) for the applicable fiscal year(s).

E. SPECIAL REMARKS:

1. Provisional/Final Rate approval and impact to closeout adjustments:

When seeking initial reimbursement of indirect costs using the provisional/final rate methodology, a provisional proposal must be submitted within 90 days of receiving a Federal award (financial assistance, grants, cooperative agreements, and cost reimbursable contracts) that requires accounting for actual costs incurred. The non-Federal entity or contractor must submit an indirect cost rate proposal within six (6) months after the end of their fiscal year to establish a final rate.

Once a final rate is negotiated, billings and charges to Federal awards must be adjusted if the final rate varies from the provisional rate. If the final rate is greater than the provisional rate and there are no funds available to cover the additional indirect costs, the non-Federal entity or contractor may not recover all indirect costs. Conversely, if the final rate is less than the provisional rate, the non-Federal entity or contractor will be required to reimburse the funding agency for the excess billings.

Non-Federal entities or contractors receiving a Federal cost reimbursable contract(s) - Must adhere with FAR 52.216-7(d)(2)(v), to settle final indirect cost rates typically on an annual basis:

> "The contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this sections, within 60 days after settlement of final indirect cost rates."

In addition, the contractor shall provide to the Contracting Officer the noted cumulative costs schedule within 60 days of the execution of this agreement.

If the non-Federal entity or contractor has completed performance under any of the contracts covered by this Agreement, a final invoice or voucher must be submitted no later than 120 days from the date on which this Agreement is executed, following guidance from FAR 52.216-7(d)(5) and FAR 52.216-7(h).

Non-Federal entities receiving Federal awards (financial assistance, grants, and cooperative agreements) – Note that even if Federal awards are administratively closed prior to the settlement of final indirect cost rates, non-Federal entities still must comply with the following 2 CFR Part 200 clauses stating, in part:

§200.344 Post-closeout adjustments and continuing responsibilities

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

§200.345 Collection of amounts due

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

2. Fringe benefits include the following: FICA/Medicare, KS State Retirement, Workers'

Compensation, Unemployment, Group Medical/Dental Insurances

3. Equipment is defined as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition. The capitalization threshold for equipment is $5,000.00.

4. The final indirect salaries approved as part of the Rate/CAP in Section I are cited to comply with the applicable, reporting period, ETA TEGL 5-06 salary and bonus restrictions.

5. Fixed Rate(s): For the Fixed rates established in this agreement, the carry-forward amounts are as follows: No carry-forward value into the FYE 6-30-2021 and a $307,700 under-recovered value to the FYE 6-30-2023.

ACCEPTANCE

BY THE NON-FEDERAL ENTITY:	BY THE COGNIZANT AGENCY FOR INDIRECT COSTS, ON BEHALF OF THE U.S. FEDERAL GOVERNMENT:
Kansas Department of Commerce 1000 S.W. Jackson St., Suite 100 Topeka, KS 66612-1354	U.S. Department of Labor Cost & Price Determination Division 200 Constitution Ave., N.W., S-1510 Washington, DC 20210
(Non-F[redacted])	(U.S. Federal Government Agency) [redacted]
(Signat[redacted] Sherry Rentfro	(Signature) *for* Victor M. López
(Name)	(Name)
Chief Fiscal Officer	Chief, Cost & Price Determination Division
(Title)	(Title)
05/20/2022	5/19/2022
(Date)	(Date)

Negotiated By: Ronald Goolsby
Office Phone: [redacted]
Email: