

Date: 9/4/19

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Submitted to: David Littrell
Gold/Silver Orchestra
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Terms:

A facility use agreement is made this September 4, 2019 (Effective Date) between Kansas State University on behalf of its **School of Music, Theatre, and Dance (hereinafter referred to as “MTD”)**, and **Gold Orchestra**, for the use of **MTD Facilities** as outlined below and in any attachments hereto.

1. MTD facilities will be made available for the purposes of rehearsals.
2. **Gold Orchestra** will be billed by MTD at the end of the fiscal year for the following facility uses:
 - a. Classroom Studio Use of **McCain 105**: \$25 for each use up to a 4-hour block.
 - i. September 7, 14, 21; October 5, 12, 19, 2019 [6 units]
 - b. Classroom Studio Use of **McCain 201**: \$25 for each use up to a 4-hour block.
 - i. September 7, 14, 21; October 5, 12, 19; November 16, 2019 [7 units]
 - c. Classroom Studio Use of **McCain 204 – Kirmser Hall**: \$25 for each use up to a 4-hour block.
 - i. September 7; October 5, 12, 19; November 16, 2019 [5 units]
 - d. Classroom Studio Use of **Nichols 017**: \$25 for each use up to a 4-hour block.
 - i. September 21, 2019 [1 unit]
3. Any additional dates/hours used will be billed consistent with item #2 at the end of the fiscal year or upon termination of this rental agreement.
4. If **Gold Orchestra** needs to check out a key, they must inform MTD of this need. The fee will be a once per academic year fee of \$20 per key. The key must be returned to MTD at the conclusion of the agreed space use.
5. MTD reserves the right to reschedule **Gold Orchestra** to an alternate MTD facility. In this rare occurrence, MTD will provide reasonable notice to **Gold Orchestra** of the reschedule and will not bill **Gold Orchestra** for that use.
6. **Gold Orchestra** agrees to comply with Kansas State University’s applicable policies and procedures, including its anti-discrimination policy, which is available at <<http://www.k-state.edu/policies/ppm/3000/3010.html>>.
7. **Gold Orchestra** agrees to pay the costs of repairing, replacing, and/or cleaning MTD facilities, equipment, and university property damaged through its or its participants’ willful or negligent actions or those of its agents. Payment shall be made within 10 days following presentation of an itemized statement from MTD, whose decision shall be final. **Gold Orchestra** also agrees to observe the university parking regulations and to pay any fines incurred because of failure to observe those regulations.

8. **Gold Orchestra** agrees to indemnify and hold harmless the university, its officers and employees for any and all injuries, costs, claims or damages, including attorney’s fees and expenses of litigation, arising out of or related to **Gold Orchestra’s** use of MTD facilities, including claims for negligence, unless the injury is proximately and solely caused by negligence of a University employee.
9. In no event shall the University, its officers and its employees be liable for any consequential or incidental damages claimed by **Gold Orchestra** by virtue of any alleged default on the part of the University. In no event shall the liability of the University, its officers and its employees for any claim of any nature by **Gold Orchestra** exceed the amount of the use fee which **Gold Orchestra** has actually paid under this agreement.
10. 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.
11. Vehicles parked at the dock area of McCain Auditorium shall not run engines. The fresh air intake for the building is located in this area. Parking on campus is fee based. All permits for vehicles may be purchased through KSU Parking Services and is the responsibility of the vehicle owner.
12. The person executing this agreement on **Gold Orchestra’s** behalf warrants their authority to do so.
13. The term of this agreement shall be from the Effective Date above until June 30, 2019. Either party may also terminate this agreement upon 30 days’ notice to the other party. All monetary funds accrued and/or owed by **Gold Orchestra** to MTD at the time a termination is effective shall be paid by **Gold Orchestra** within fifteen (15) calendar days of the termination effective date.
14. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this agreement and made a part hereof.

The parties must sign this form before Gold Orchestra’s use of MTD Facilities begins.

Gold Orchestra Representative

Jeffrey Ward, Director
School of Music, Theatre and Dance

Date

Date

ESTIMATE

Item	Qty:	Unit	Unit Price	Cost
201 McCain	6	4hr	\$25.00	\$150.00
204 McCain	7	4hr	\$25.00	\$175.00
105 McCain	5	4hr	\$25.00	\$125.00
017 Nichols	1	4hr	\$25.00	\$25.00

TOTAL: \$475.00

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. 06-12), 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 4th day of September, 2019.

- 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.
- 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.
- 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.
- 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.).
- 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.

- Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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."
- Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.