**INSTRUCTIONS FOR CONTRACTOR**

**DO NOT ATTACH THIS PAGE TO CONTRACT**

***COMPLETE ALL STEPS BEFORE SIGNING***

[ ]  Check one box at top of Page 1 for the type of business entity. Use complete legal business name.

[ ]  Sections 3, 4 and 5 will be completed by the City and should be complete & accurate before you sign.

[ ]  Put a name in Sec. 8.A. – person responsible for day-to-day administration of this contract.

[ ]  **Affirmative Action:** Check the appropriate box in Sec. 13.B., Article IV and complete the appropriate online form for the box you have checked:

**All contractors:**

Access the online forms for Affirmative Action compliance at this link: [www.cityofmadison.com/civil-rights/contract-compliance/vendors-suppliers/forms](http://www.cityofmadison.com/civil-rights/contract-compliance/vendors-suppliers/forms). If you do not already have an approved, current Affirmative Action Plan on file with the City of Madison, read the “*Instructions for Completing City of Madison Affirmative Action Plan*” at the above link. This will direct you to register for an account. If you already have an account you may click on the link for “*Affirmative Action Plan for Vendors and Suppliers*” to proceed. If you have never filed a plan or request for exemption, you must create an account in our online system. If you are exempt under Article IV, Sections C or D you will still need to create an account and go through some steps to confirm your exemption. Register for an account here: [https://elam.cityofmadison.com/citizenaccess](https://elam.cityofmadison.com/citizenaccess/).

Affirmative Action Questions? Contact Dept. of Civil Rights, Contract Compliance: (608) 266-4910.

[ ]  Complete Sec. 15 – Official Notices. This is the name/job title/address of a person at your organization to receive legal notices under this contract. (Not usually the same person as 8.A.)

[ ]  Enclose CERTIFICATE OF INSURANCE (COI) showing proof of all insurance required in Sec. 27. The contract will not be signed without an approved COI on file. Questions? Call (608) 266-5965.

**Insurance Instructions:**

Certificate Holder: City of Madison

Attn: Risk Manager

210 Martin Luther King Jr. Blvd. Room 406

Madison, WI 53703

Proof of all insurance required in the contract must be shown. Use the City’s certificate at this link: [www.cityofmadison.com/finance/documents/CertInsurance.pdf](http://www.cityofmadison.com/finance/documents/CertInsurance.pdf).

**Insurance delivery options:** (a) email certificate to eveum@cityofmadison.com with a copy to your City contact person, or (b) make arrangements to mail a hard copy to your contact person at the City.

[ ]  Review and ensure compliance with WCAG 2.1 Levels A and AA, per section 33, when required.

[ ]  Signature line. A person with authority to bind the organization should sign, date, and print their name and job title where shown on the signature page. Contractor signs first, City signs last.

[ ]  Use any electronic method to sign where indicated, and email signed PDF to your agency contact, unless otherwise instructed.

* Make sure all exhibits/attachments are labeled and attached to the PDF after the signature page, unless otherwise instructed.
* City will sign last, and will email you an electronic signed copy unless otherwise requested.

***Failure to complete these steps will result in contract not being signed.***

 ***- DO NOT INCLUDE THIS INSTRUCTION PAGE WITH THE SIGNED CONTRACT -***

**City of Madison**

**CONTRACT FOR PURCHASE OF SERVICES**

(Software/Technology Services)

1. **PARTIES.**

This is a Contract between the City of Madison, Wisconsin, hereafter referred to as the "City" and       hereafter referred to as "Contractor."

The Contractor is a: [ ]  Corporation [ ]  Limited Liability Company [ ]  General Partnership [ ]  LLP

(to be completed by contractor) [ ]  Sole Proprietor [ ]  Unincorporated Association [ ]  Other:       .

2. **PURPOSE.**

The purpose of this Contract is as set forth in Section 3.

3. **SCOPE OF SERVICES AND SCHEDULE OF PAYMENTS.**

Contractor will perform the following services and be paid according to the following exhibits(s) or attachment(s):

Attachment A: (name) (List all attachments here by name, and label and attach them, in order.)

Attachment B: (name)

**Order of Precedence:** In the event of a conflict between the terms of this Contract for Purchase of Services and the terms of any document attached or incorporated herein, the terms of this Contract for Purchase of Services shall control and supersede any such conflicting term.

4. **TERM AND EFFECTIVE DATE.**

This Contract shall become effective upon execution by the Mayor, (or the Purchasing Agent, if authorized) on behalf of the City of Madison, unless another effective date is specified in exhibit(s) or attachment(s) incorporated in Section 3, however in no case shall work commence before execution by the City of Madison. The term of this Contract shall be (complete this sentence by inserting dates or referencing an attachment. If purchasing annual services describe the start date or anniversary date).

5. **COMPENSATION.**

It is expressly agreed that in no event will the total compensation under this Contract exceed:

 [ ]  the pricing set forth in      .

OR [ ]  an annual cost of $\_     \_ per year for the term of this Contract.

OR [ ]  annual pricing as follows: Year 1:

Year 2:

Year 3:

Year 4:

Year 5:

(*Select 1 box and complete all relevant fields for that box. The first box is designed to reference an attachment listed in Section 3.*)

6. **BASIS FOR PAYMENT**.

A. The City will pay the Contractor for the services rendered under this Contract at the Contract price set forth in Section 5.

 B. The Contractor shall submit invoices in a format approved by the City and as may be further specified in attachment(s) listed in Section 3.

 C. The City will pay the Contractor according to the schedule, if any, set forth in attachment(s) listed in Section 3.

 D. If this Contract contains more than one product or service, invoices shall be itemized accordingly.

 E. Payment shall not be construed as City acceptance of unsatisfactory or defective services or improper materials.

 F. The City has the equitable right to set off against any sum due and payable to the Contractor under this Contract, any amount the City determines the Contractor owes the City, whether arising under this Contract or under any other agreement or otherwise.

 G. Compensation in excess of the total price in Section 5 will not be allowed unless authorized by an amendment under Section 24, Amendment.

 H. The City will not compensate for unsatisfactory performance by the Contractor.

7. **ASSIGNABILITY, SUBCONTRACTING, DATA CENTERS AND OUTSOURCING.**

A. Unless expressly stated in the attachment(s) incorporated in Section 3, Contractor shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. For purposes of this contract, data centers and third-party software providers are considered subcontractors and must be disclosed and expressly approved in writing by the City. Any use of subcontractors shall comply with all provisions of this Contract applicable to subcontractors.

B. Data Center Location. Contractor shall host or store the City’s data geographically within the continental United States of America (“USA.”) Contractor shall not perform or subcontract for the performance of any services under this Contract that require removal of City Data (as defined in sec. 28) to a location outside the USA, and shall not subcontract with any offshore subcontractor for any work under this Contract.

8. **DESIGNATED REPRESENTATIVE.**

Contractor designates       as Contract Agent with primary responsibility for the performance of this Contract. If the Contract Agent resigns, is replaced, or is no longer acting as Contract Agent for any reason, Contractor will notify the City in writing of the change, and propose a replacement Contract Agent within seven (7) calendar days. The City may accept another person as the Contract Agent or may terminate this Contract under Section 25, at its option.

9. **PROSECUTION AND PROGRESS.**

A. Services under this Agreement shall commence upon written order from the City to the Contractor, which order will constitute authorization to proceed; unless another date for commencement is specified elsewhere in this Contract including documents incorporated in Section 3.

B. The Contractor shall complete the services under this Agreement within the time for completion, if any, specified in the attachment(s) listed in Section 3. The time for completion shall not be extended because of any delay attributable to the Contractor, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Contractor. If at any time the Contractor believes that the time for completion of the work should be extended because of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Contractor shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work. Notwithstanding the foregoing or any other provision in this Contract, the parties agree the Covid-19 pandemic is not an unexpected event that will excuse Contractor from any provision of this Contract or otherwise qualify as a force majeure event, absent the City’s express written agreement.

10. **EXTRA SERVICES.**

 Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total Contract price, as set forth in Section 23, unless the Contract is amended as provided in Section 9 above.

11. **NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. **NON-DISCRIMINATION.**

During the term of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

13. **AFFIRMATIVE ACTION.**

**A. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c):**

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor will provide to the City of Madison Department of Civil Rights (the “Department”), certain workforce utilization statistics, using a form provided by the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec. 13.A.) at the time the Request for Exemption in 13.B.(2) is made.

**B. Articles of Agreement, Request for Exemption, and Release of Payment:**

**The “ARTICLES OF AGREEMENT” beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:**

|  |  |  |
| --- | --- | --- |
| NUMBER OF EMPLOYEES | LESS THAN $50,000Aggregate Annual Business with the City\* | $50,000 OR MOREAggregate Annual Business with the City\* |
| 14 or fewer | Exempt\*\* | Exempt\*\* |
| 15 or more | Exempt\*\* | Not Exempt |

\*As determined by the Finance Director \*\*As determined by the Department of Civil Rights

(1) Exempt Status: In this section, “Exempt” means the Contractor is exempt from the Articles of Agreement in section 13.B.(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights (“Department”) makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 13.B.(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

(2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.

(3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than $50,000 in annual aggregate business with the City in the calendar year. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 13.B.(5) UPON REACHING $50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.

(4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to ensure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true **(check one):**

[ ]  A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.

[ ]  B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.

[ ]  C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

[ ]  D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than fifty thousand dollars ($50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section **39.02**(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

A. Cancel, terminate or suspend this Contract in whole or in part.

B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.

C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars ($10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

14. **SEVERABILITY.**

It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.

15. **NOTICES.**

All notices to be given under the terms of this Contract shall be in writing and signed by the person serving the notice and shall be sent to the address listed below by US Post Office registered or certified mail, return receipt requested, postage prepaid; hand delivered; or via email if a party has provided an email address below. Email notices are presumed delivered on the date the email is sent by the sender.

|  |  |
| --- | --- |
| FOR THE CITY: |       |
|  | (Department or Division Head) |
|  |       |
|  |       |
|  | Email:       |
|  |  |
| FOR THE CONTRACTOR: |       |
|  |       |
|  |       |
|  | Email:       |

16. **INDEPENDENT CONTRACTOR AND TAX INFORMATION.**

 It is agreed that Contractor is an independent contractor and not an employee of the City, and any persons who the Contractor utilizes or provides for services under this Contract not employees of the City of Madison.

**Contractor shall provide its taxpayer identification number (or social security number) to the Finance Director, 210 Martin Luther King Jr. Blvd, Room 406, Madison, WI 53703, prior to payment.** Contractor, as an independent Contractor, may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this Contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that it may be subject to civil and/or criminal penalties for failing to properly report income and pay taxes and social security taxes on the amount received under this Contract.

17. **GOODWILL.**

Any and all goodwill arising out of this Contract inures solely to the benefit of the City; Contractor waives all claims to benefit of such goodwill.

18. **THIRD PARTY RIGHTS.**

This Contract is intended to be solely between the parties hereto. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.

19. **AUDIT AND RETAINING OF DOCUMENTS.**

The Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, accounting of services rendered, and any other reports or documents relevant to the provision of services under this Contract or the enforcement of its provisions. Such documents shall be provided according to the schedule (if any) included in this Contract, or Any within five (5) business days after Contractor receives the City's written request, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by the Contractor for a period of three (3) years after completion of all work under this Contract, in order to be available for audit by the City or its designee.

20. **CHOICE OF LAW, VENUE, AND FORUM SELECTION.**

 This Contract shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin, without regard to conflict of law principles. For any claim or suit or other dispute relating to this Contract that cannot be mutually resolved informally, the venue shall be Dane County, Wisconsin, and the parties agree to submit themselves to the jurisdiction of a court of competent jurisdiction in said venue, to the exclusion of any other forum that may have jurisdiction over such a dispute according to any law.

21. **COMPLIANCE WITH APPLICABLE LAWS.**

The Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.

22. **CONFLICTS OF INTEREST, NON-SOLICITATION OF CITY EMPLOYEES.**

A. The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.

B. The Contractor shall not employ or contract with any person currently employed by the City to perform any of the work to be performed under this Contract.

C. During the term of this Contract and for a period of twelve (12) months thereafter, the Contractor shall not solicit, recruit, hire, or otherwise employ or contract with any City of Madison employee who performs any role for the City that impacts the work under this Contract. The use of regular solicitation efforts such as newspaper or online advertisements, employment agencies, open houses, job fairs, or other widely distributed announcements of job openings and not specifically directed toward City employees involved in the work of this Contract are not considered a violation of this paragraph C.

23. **ENTIRE AGREEMENT.**

This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 3 (hereafter, “Agreement” or “Contract”) is the entire Agreement of the parties and supersedes any and all oral contracts and negotiations between the parties. If any document referenced in Section 3 includes a statement that expressly or implicitly disclaims the applicability of this Contract for Purchase of Services, or a statement that such other document is the “entire agreement,” such statement shall be deemed rejected and shall not apply to this Contract.

24. **AMENDMENT.**

This Contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Contract.

25. **DEFAULT/TERMINATION.**

A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Contract and all rights of Contractor under this Contract.

B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the Contractor with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Contractor and accepted by the City.

26. **INDEMNIFICATION.**

A. General. The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for (i) damages because of bodily injury, including death at any time resulting therefrom, (ii) damage to property including loss of use thereof, (iii) loss of City Data, (iv) security breach to the City’s network (defined in Section 31), (v) violation of section 33 (WCAG), (vi) breach of any confidentiality clauses incorporated in Section 3, (vii) violation of applicable privacy laws, and (viii) third party claims for intellectual property infringement unless the same is provided for in an attachment or exhibit listed in section 3; arising from, in connection with, caused by or resulting from the Contractor's and/or Subcontractor's acts or omissions in the performance of this Agreement. An allegation of negligence on the part of the City, its officers, officials, agents, or its employees shall not relieve Contractor of its obligations under this paragraph A.

B. Intellectual Property Infringement. Contractor shall indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against third party claims of intellectual property infringement as set forth in an exhibit or attachment referenced in Section 3. If the exhibit(s) or attachment(s) do not include a provision for their party claims of intellectual property indemnification by the Contractor, then paragraph A above shall apply to such claims.

27. **INSURANCE.**

The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability. The Contractor shall procure and maintain during the life of this Contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than $1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor’s coverage shall be primary and non-contributory and list the City of Madison, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Worker’s Compensation. The Contractor shall procure and maintain during the life of this Contract statutory Workers’ Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least $100,000 Each Accident, $100,000 Disease – Each Employee, and $500,000 Disease – Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.

Professional/Technology Errors & Omissions. The Contractor shall procure and maintain Professional liability insurance, covering technology errors and omissions, with coverage of not less than $2,000,000 per claim and in the aggregate. Coverage shall include, but not be limited to, both liability and property loss exposures including technology services, technology products, media content, and business interruption; and negligent acts, errors, mistakes, and omissions arising out of the work or services performed by Contractor, or any person employed or contracted by Contractor. If such policy is a “claims made” policy, all renewals thereof during the life of the Contract shall include “prior acts coverage” covering at all times all claims made with respect to Contractor’s work performed under the Contract. This coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

Cyber Liability. Contractor shall procure and maintain during the life of this Contract, Cyber and Privacy insurance with limits of not less than $2,000,000 per claim and in the aggregate. Coverage shall include, but not be limited to, coverage for unauthorized access, denial of service attacks, computer viruses, transmission of malicious code, and failure of security; security incidents, security breach, privacy breach, the failure to protect and disclosure of personally identifiable information, payment card information, and health information; and violation of any federal, state or local law or regulation in connection with the protection of information, including coverage for fines and penalties to the extent allowed by applicable law. If such policy is a “claims made” policy, all renewals thereof during the life of the Contract shall include “prior acts coverage” covering at all times all claims made with respect to Contractor’s work performed under the Contract.

**Acceptability of Insurers.** The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

**Proof of Insurance, Approval.** The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City’s representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is still in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:

City of Madison

ATTN: Risk Management, Room 406

210 Martin Luther King, Jr. Blvd.

Madison, WI 53703

The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

28. **CITY DATA, ACCESS, BACK-UP, SECURITY, PUBLIC RECORDS.**

A. Ownership of City Data. All of the data uploaded, submitted, or posted by the City and its end users and customers under this Contract, and all data prepared by the Contractor for the City under this Contract, including the City’s confidential information and Personal Data defined below (hereafter, “City Data”) shall remain the City’s data and be owned by the City. Such data may be further defined in the attachment(s) incorporated in section 3 if expressly agreed by the City in writing. Notwithstanding anything to the contrary, including the attachment(s) incorporated in Section 3, Contractor shall use City Data solely for the purpose of providing the services to the City as described in this Contract, and Contractor acquires no rights to and shall not sell, share, duplicate, publish, or create derivative works from the City Data, unless expressly agreed in writing by the City. Subject to and only with the City’s express written agreement incorporated into this Contract, Contractor may acquire rights to certain anonymous and aggregate data and may use such data only as expressly described in this Contract.

B. City Access to Records and Handling of Records. The City shall have the right to access, export and retrieve all City Data and any other data meeting the definition of “Records” below, in a format acceptable to the City, at no additional cost, during the term of this Contract and for ninety (90) days from the date of termination or expiration or expiration of this Contract. Unless otherwise expressly agreed in writing in attachment(s) incorporated in Section 3 or otherwise agreed in writing by the parties, Contractor shall return or destroy all City Data promptly after ninety (90) days from the expiration or termination of this Contract

C. Back-Up and Recovery. Unless otherwise agreed in writing, Contractor is responsible for creating, maintaining, and testing backup copies of City Data. Contractor is responsible for an orderly and timely recovery of its services and City Data in the event of a service interruption. Contractor shall employ back up strategies and replicate data to a fully redundant disaster recovery site that meets, at a minimum, the specifications described in Contractor’s Software Acquisition Questionnaire submitted to the City. Backup copies of City Data shall not be included in calculating any maximum data storage allotted to the City under this Contract.

D. Security, PCI, HIPAA. Contractor shall implement and maintain appropriate administrative, physical, and technical safeguards and procedures, policies and technology for the protection of the security, confidentiality and integrity of City Data, including any confidential information of the City, to a degree that complies at a minimum with (i) the City’s Network Connection Policy in section 31, (ii) Contractor’s applicable availability and security policies, and (iii) Contractor’s most recent Software Acquisition Questionnaire submitted to the City. Such safeguards shall include measures designed to protect against the unauthorized access to or disclosure of City Data, the City’s network as defined in section 31, and the City’s confidential information. For purposes of this section the City’s confidential information includes any personal data or personally identifiable information of the City, its employees, customers, and end users (“Personal Data.”) If any Personal Data or other sensitive data is transmitted, stored, or processed by the Contractor under this Contract, Contractor’s safeguards shall comply with all applicable privacy laws and other laws or regulations relating directly to the transmission, storage and processing of such data. If this contract includes payment processing or payment gateway services to handle payment card transactions on the City’s behalf, the Contractor and any relevant subcontractors, including data centers, shall comply with all relevant Payment Card Industry Data Security Standards (PCI DSS) and the parties shall agree in writing to additional terms for the same, to be incorporated herein. If this Contract involves Protected Health Information subject to the HIPAA privacy rule under the Health Insurance Portability and Accountability Act and subsequent applicable regulation, the parties shall execute a business associate agreement or other appropriate document as required by such laws.

E. Notification of Incident or Breach. Contractor shall meet all industry standard and applicable legal and regulatory requirements for the identification, notification, and escalation of a security incident, security breach, data breach, or privacy breach.

Contractor shall immediately notify the City if Contractor becomes aware of any of the following: a security incident, security breach, data breach, or privacy breach involving City Data where City Data or confidential information has been accessed, disclosed, or acquired by anyone without proper authorization, or in violation of any applicable privacy laws, or contrary to the terms of this Contract, or unauthorized access to the City’s Network as defined in the City’s Network Connection policy found here: <https://www.cityofmadison.com/attorney/documents/posNetworkConnection.docx>.

Contractor shall notify the City first by calling the IT Help Desk at (608) 266-4193 (available 24/7) followed up by an immediate written email notification to IT@cityofmadison.com.

Contractor shall cooperate with the City regarding recovery and remediation. If so required, and at the City’s option, Contractor shall provide, at Contractor’s expense, all written notices to persons affected by any such incident or breach in accordance with applicable federal and state data or privacy breach notification laws.

F. Mitigation and Cost. Contractor shall take all actions necessary to mitigate any breach or incident described in paragraph E. to preserve forensic evidence, to return the City’s services to standard operability, and as may be required by law. Contractor shall bear all reasonable costs and expenses for remedial and mitigation actions incurred as a result of an incident or breach resulting from a vulnerability to Contractor’s product(s), network(s), or computer system(s) and those of its subcontractors including any third party data centers, if caused directly or indirectly by Contractor. Such costs include but are not limited to the administrative cost of opening and closing accounts, notifications, print and mailing, and obtaining credit monitoring services and identity theft insurance for those whose Personal Data has or may have been compromised, regulatory investigations, fines, penalties, enforcement actions and settlements.

G. Order of Precedence: If Contractor’s quote, any online terms of the Contractor, or any of the attachments or exhibits incorporated in section 3 include definitions for security incident or breach, data breach, privacy breach, and the like, the broader definition shall control and shall be substituted for the definition herein.

In the event of any conflict in language between this Section 28 and Contractor’s quote, any online terms of the Contractor, and any attachment or exhibit incorporated in section 3 herein, the language that provides stronger protection for the City, City Data, the City’s Network, its customers and end users shall control and supersede any directly conflicting language in the other document.

H. Cooperation with Public Records Requests.

1. Cooperation by Contractor. This section applies to “Records” of the City, as defined below:
2. Records Under the Wisconsin Public Records Laws. As a Wisconsin municipality, the City must comply with requests to produce records under sections 19.31 to 19.37 of the Wisconsin Statutes, the “Wisconsin Public Records Laws.” In this section, “Records” are as defined in Wis. Stat. §19.32(2) and include Contractor’s Records described in Wis. Stat. §19.36(3). Records fall into two categories: (1) Records prepared by the Contractor in the course of providing services under this Contract and (2) Records originating with the City that are provided to Contractor under this Contract. The City is the Custodian of all of the City’s Records, including the City Data and any other data or information provided to Contractor under this Contract, and as such, the City shall make a final determination under the Wisconsin Public Records Laws as to whether to allow public inspection or release of such Records. Contractor acknowledges that the City cannot hire a contractor to conduct public business with the purpose or effect of evading the City’s responsibilities under the Wisconsin Public Records Laws.
3. Duty to Cooperate with City Records Custodians. Contractor shall cooperate and coordinate concerning any requests by third parties brought under the Wisconsin Public Records Laws for inspection or production of Records in the possession of Contractor or its subcontractors (including data centers) under this Contract. Contractor agrees to produce any and all records under this Contract that are requested by a City records custodian (defined in Wis. Stats. § 19.33, hereafter, “Custodian”) in response to a request received by the City from any member of the public. Contractor shall produce such records within ten (10) business days from the date requested by the Custodian or another mutually agreeable time. At the time such records are delivered to the City the Contractor shall inform the Custodian, in writing, of any and of all reasons Contractor believes that such records, or identified portions thereof, should not be publicly disclosed. The Custodian shall notify the Contractor, in writing, whether the Custodian agrees or disagrees with such reasoning, of the Custodian’s intent to disclose records, the date such disclosure will be made, and the name and address of the requester of the records. The City has no obligation to withhold Records at the request of Contractor, absent a court order.

 If Contractor fails to produce Records as defined above in response to a request from the City resulting from a third party’s request under the Open Records laws, or if the City should decide to withhold Records produced under this Contract at the Contractor’s request and any third party commences an action against the City of Madison or an officer, official, agent, employee, or its Custodian as a result of this decision, Contractor shall indemnify, defend and hold harmless the City’s Records Custodian, the City of Madison, and its officers, officials, agents, and employees from all loss, risk of loss, claims, judgments and damages (including expenses, costs and actual attorney fees), sustained or incurred because or by reason of any claim, demand, suit, action, judgment, execution, for damages for any kind alleged to have been caused by, resulting from, arising out of or in any manner related to the failure to release or produce Records. The City shall give prompt notice of any such claim or action that may trigger Contractor’s obligations under this paragraph, using the notice procedures set forth in this Contract.

 2. Disclosure by the City. Any provision regarding the Contractor’s confidential or proprietary information in Contractor’s quote, any online terms of the Contractor, or the attachments referenced in Section 3 shall not apply to the City’s disclosure in response to a public records request when, in the sole discretion of the City’s records custodian, the disclosure is required by the Wisconsin Public Records laws as defined below and not exempt as a Trade Secret as defined in Wis. Stat. §134.90(1)(c).

29. **BAN THE BOX - ARREST AND CRIMINAL BACKGROUND CHECKS.** (Sec. 39.08, MGO. Applicable to contracts exceeding $25,000.)

A. DEFINITIONS. For purposes of this section, “Arrest and Conviction Record” includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

“Conviction record” includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

“Background Check” means the process of checking an applicant’s arrest and conviction record, through any means.

B. REQUIREMENTS. For the duration of this Contract, the Contractor shall:

(1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant’s arrest and conviction record, as defined herein.

(2) Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.

(3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.

(4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.

(5) Comply with all other provisions of Sec. 39.08, MGO.

C. EXEMPTIONS: This section does not apply when:

(1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or

(2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. C.(1) or (2) above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the contractor is exempt from this section for the position(s) in question.

30. **WEAPONS PROHIBITION.**

Contractor shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the Contractor’s or subcontractor’s own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee’s “own motor vehicle” pursuant to Wis. Stat. sec. 175.60(15m).

31. **IT NETWORK CONNECTION POLICY.**

If this Contract includes services such as support, software maintenance, network services, and/or system development services that will require Contractor to make a Network Connection the City Network (as defined in the following link), the City’s Network Connection Policy found at this link: [www.cityofmadison.com/attorney/documents/posNetworkConnection.docx](http://www.cityofmadison.com/attorney/documents/posNetworkConnection.docx) is hereby incorporated and made a part of this Contract and Contractor agrees to comply with all of its requirements.

32. **GASB**.

During the term of this Contract and for twelve (12) months thereafter, Contractor shall provide all information requested by the City and/or its contracted auditor necessary for the City to comply with applicable Government Accountability Standards Board (GASB) standards, including but not limited to GASB Statement No. 87 (Leases) and GASB Statement No. 96 (Subscription-Based Information Technology Arrangements). If applicable, Contractor shall structure its activities, invoices, and record-keeping under this Contract to provide the City with all necessary cost elements for the City’s GASB compliance, including but not limited to: Lease Term in Years, Discount Rates, Separates Multiple components (Equipment from Software), Lease Incentives, Buy-Outs, Amendments to the Terms, and cooperate with all other requests of the City and its auditor as the City deems necessary for its GASB compliance. Contractor shall comply with all applicable Securities and Exchange Commission (SEC) regulations.

33. **WEB AND MOBILE ACCESSIBILITY COMPLIANCE (WCAG).**

The City of Madison, as a local government entity, is required by Title II of the Americans with Disabilities Act (ADA) and its implementing regulations at 28 CFR 35 Subpart H (hereafter the “Accessibility Rule”) to ensure that all Web Content and Mobile Applications, as defined in 28 CFR 35.104, are readily accessible to and usable by individuals with disabilities. As of the effective date of this Contract, the Accessibility Rule adopts Web Content Accessibility Guide (WCAG) version 2.1 and requires compliance with WCAG 2.1 success criteria levels A and AA no later than April 24, 2026.

Therefore, Contractor shall cause any and all Web Content and Mobile Applications provided under this Contract to comply with WCAG 2.1 Level AA or higher as demonstrated using the Information Technology Industry Council’s Voluntary Product Accessibility Template VPAT ® version 2.5 WCAG (November 2023) (or an updated version of the VPAT designed for enforcement of the Accessibility Rule, or a similar compliance tool if specified by the City) no later than April 24, 2026 and for the term of this Contract.

Contractor shall continue to ensure its Web Content and Mobile Applications provided under this Contract comply with the current version of the Accessibility Rule if that rule is amended during the term of this Contract. Contractor agrees to complete and provide the City updated compliance report(s) upon request during the term of this Contract, which may include updated versions of the VPAT ® that conform with any amendment to the Accessibility Rule, and cooperate with the City’s compliance review process.

Failure to comply with this section when required by the Accessibility Rule shall be considered a material breach and subject to immediate termination of this Contract upon written notice by the City. Alternatively and without waiving any available remedy, the City may withhold payments due to the Contractor until compliance is achieved or the parties have agreed in writing on plan to reach compliance or meet applicable exceptions under the Accessibility Rule.

34. **AUTHORITY.**

Contractor represents that it has the authority to enter into this Contract. If the Contractor is not an individual, the person(s) signing on behalf of the Contractor represents and warrants that they have been duly authorized to bind the Contractor and sign this Contract on the Contractor’s behalf.

35. **COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY.**

 This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Contract may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

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|  |  | **CONTRACTOR** |
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|  |  | (Type or Print Name of Contracting Entity) |
|  |  | By: |  |
|  |  |  | (Signature) |
|  |  |  |  |       |
|  |  |  | (Print Name and Title of Person Signing) |
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|  |  |  | **CITY OF MADISON, WISCONSIN****a municipal corporation** |
|  |  |  |  |
|  |  |  | By: |  |
|  |  |  |  | Satya Rhodes-Conway, Mayor |
|  |  |  |  |  |
|  |  | Date: |  |
| **Approved:** |  |  |
|  |  |  |  |  |
|  |  | By: |  |
| David P. Schmiedicke, Finance Director |  |  | Maribeth Witzel-Behl, City Clerk |
|  |  |  |  |  |
| Date: |  |  | Date: |  |
|  |  | **Approved as to Form:** |
|  |  |  |
| Eric T. Veum, Risk Manager |  | Michael Haas, City Attorney |
| Date: |  |  | Date: |  |
|  |  |  |

**For City Use Only:** SIGNATURE INSTRUCTIONS FOR CONTRACTS SIGNED BY MAYOR/CLERK:

Obtain contractor’s signature first. Route this contract & all of its attachments for City signatures using the City Clerk’s Contract Routing Database. Include 1 copy of authorizing resolution & 1 copy of the Certificate of Insurance.

**NOTE: Certain service contracts may be executed by the designee of the Finance Director on behalf of the City of Madison:**

|  |  |  |  |
| --- | --- | --- | --- |
| By: |  |  |  |
|  | Mary Richards, Procurement Supervisor |  | Date |

MGO 4.26(3) and (5) authorize the Finance Director or designee to sign purchase of service contracts when all of the following apply:

(a) The funds are included in the approved City budget.

(b) An RFP or competitive process was used, or the Contract is exempt from competitive bidding under 4.26(4)(a) (contracts up to $75,000 in total or up to $75,000 per year for software and technology services are exempt.)

(c) The City Attorney has approved the form of the Contract.

(d) The Contract complies with other laws, resolutions and ordinances.

(e) The Contract is for a period of 1 year or less, OR not more than 5 years AND the average cost is not more than $100,000 per year, AND was subject to competitive selection. (If more than $75,000 and exempt from bidding under 4.26(4)(a), regardless of duration of the Contract, the Common Council must authorize the Contract by resolution and the Mayor and City Clerk must sign, per 4.26(5)(b).)

**For City Use Only:** SIGNATURE INSTRUCTIONS WHEN SIGNED BY FINANCE (PURCHASING):

Obtain contractor’s signature first. Attach the contractor-signed contract with all attachments/exhibits and the certificate of insurance to the requisition in MUNIS.