**INSTRUCTIONS FOR CONTRACTOR**

**DO NOT ATTACH TO CONTRACT**

**Instructions for POS for University of Wisconsin**

***Your contract MUST include the following information,***

***or it will not be signed by the City.***

[ ]  Section 1: complete the Contractor name using the full legal name of the University, School and Department, as appropriate. (Typically this begins with “The Board of Regents for the University of Wisconsin Systems, on behalf of the University of Wisconsin-Madison….” ).

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

[ ]  Type a name in Sec. 7.A. – person responsible for administering the contract on a day to day basis.

[ ]  Complete Sec. 14 – Official Notices. This is the name/job title/address of the person at the University to receive legal notices under the contract.

[ ]  Review and complete the signature line for Contractor. A person with authority to sign contracts should sign, date, and print their name and job title where shown on the signature page. Let us know if you need additional signature lines. The University signs first, the 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.

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**City of Madison**

**CONTRACT FOR PURCHASE OF SERVICES**

**(University of Wisconsin-Madison)**

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 [x]  Other: State Agency .

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 schedule(s) or attachment(s):

List all attachments here by name, and attach and label them accordingly.

**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 the 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 insert dates or reference attachments as needed.

5. **ENTIRE AGREEMENT.**

This Contract for Purchase of Services, including 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.

6. **ASSIGNABILITY/SUBCONTRACTING.**

Contractor shall not assign or subcontract any interest or obligation under this Contract without the City's prior written approval. All of the services required hereunder will be performed by Contractor and employees (including students) of Contractor unless otherwise expressly agreed in writing.

7. **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 23, at its option.

8. **PROSECUTION AND PROGRESS.**

A. Services under this agreement shall commence upon written order from the City to the Contractor. This order will constitute authorization to proceed.

B. The Contractor shall complete the services under this agreement within the time for completion specified in the Scope of Services, including any amendments. The Contractor's services are completed when the City notifies the Contractor in writing that the services are complete and are acceptable. 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.

C. Services by the Contractor shall proceed continuously and expeditiously through completion of each phase of the work.

D. Progress reports documenting the extent of completed services shall be prepared by the Contractor and submitted to the City with each invoice under Section 22 of this agreement, and at such other times as the City may specify.

E. The Contractor shall notify the City in writing when the Contractor has determined that the services under this agreement have been completed. When the City determines that the services are complete and are acceptable, the City will provide written notification to the Contractor, acknowledging formal acceptance of the completed services.

9. **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 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.

10. **EXTRA SERVICES.**

The City may require the Contractor to perform extra services or decreased services, according to the procedure set forth in Section 22. 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 21, 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. **NONDISCRIMINATION.**

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. **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.

14. **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 registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

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| --- | --- |
| FOR THE CITY: |       |
|  | (Department or Division Head) |
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|  |  |
| FOR THE CONTRACTOR: |       |
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15. **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 are not employees of the City of Madison.

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

16. **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.

17. **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, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Contract. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the City's written requests, 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.

18. **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.

19. **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.

20. **CONFLICT OF INTEREST.**

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 for any services included under the provisions of this Agreement.

21. **CONTRACT PRICE.**

It is expressly understood and agreed that in no event will the total price of this Contract exceed $       .

22. **BASIS FOR PAYMENT.**

 A. GENERAL.

 (1) The City will pay the Contractor for the completed and accepted services rendered under this Contract on the basis and at the Contract price set forth in Section 21 of this Contract. The City will pay the Contractor for completed and approved "extra services", if any, if such "extra services" are authorized according to the procedure established in this section. The rate of payment for "extra services" shall be the rate established in this Contract. Such payment shall be full compensation for services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the services.

 (2) The Contractor shall submit invoices, on the form or format approved by the City and as may be further specified in Section 3 of this Contract. The City will pay the Contractor in accordance with the schedule, if any, set forth in Section 3. The final invoice, if applicable, shall be submitted to the City within three months of completion of services under this Agreement.

(3) Should this Agreement contain more than one service, a separate invoice and a separate final statement shall be submitted for each individual service.

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

 (5) Final payment of any balance due the Contractor will be made upon acceptance by the City of the services under the Agreement and upon receipt by the City of documents required to be returned or to be furnished by the Contractor under this Agreement.

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

(7) Compensation in excess of the total Contract price will not be allowed unless authorized by an amendment under Section 9, AMENDMENT.

(8) The City will not compensate the Contractor for deliverables or services that are not delivered or that do not meet the requirements of this Contract.

B. SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE.

(1) Written orders regarding the services, including extra services or decreased services, will be given by the City, using the procedure set forth in Section 14, NOTICES.

(2) The City may, by written order, request extra services or decreased services, as defined in Section 10 of this Contract. Unless the Contractor believes the extra services entitle it to extra compensation or additional time, the Contractor shall proceed to furnish the necessary labor, materials, and professional services to complete the services within the time limits specified in the Scope of Services, Section 3 of this Agreement, including any amendments under Section 9 of this Agreement.

(3) If in the Contractor's opinion the order for extra service would entitle it to extra compensation or extra time, or both, the Contractor shall not proceed to carry out the extra service, but shall notify the City, pursuant to Section 14 of this Agreement. The notification shall include the justification for the claim for extra compensation or extra time, or both, and the amount of additional fee or time requested.

(4) The City shall review the Contractor's submittal and respond in writing, either authorizing the Contractor to perform the extra service, or refusing to authorize it. The Contractor shall not receive additional compensation or time unless the extra compensation is authorized by the City in writing.

23. **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.

24. **HOLD HARMLESS.**

During the term of this Agreement, the Contractor agrees to hold harmless the City of Madison and its employees, agents, officers, and officials from any and all liability including claims, demands, losses, costs, damages, and expenses of every kind and description (including death), or damages to persons or property, based on the acts or omissions of the Contractor, its officers, officials, employees, or agents while acting within the scope of their employment or agency, consistent with sections 895.46(1) and 893.82 of the Wisconsin Statutes.

It is not the intent of either party to this agreement to waive the provisions of Wis. Stats. Sec. 893.80 or 893.82 or any other applicable immunity, protections, or limitations of liability applicable to either party which may be provided by law.

25. **INSURANCE.**

The Contractor, as a unit of the University of Wisconsin-Madison, an agency of the State of Wisconsin, provides liability coverage for its officers, agents, officials and employees consistent with Section 895.46(1) and 893.82 of the Wisconsin Statutes. The Contractor's employees who participate in the activities resulting from this Agreement are employees of the State of Wisconsin. Although the liability coverage provided by the State of Wisconsin under Wis. Stats. Sec. 895.46(1) is self-funded, unlimited, and continuous, it is subject to the damage cap in Wis. Stats. Sec. 893.82(6). Such liability coverage includes, but is not limited to claims, demands, losses, costs, damages and expenses of every kind and description (including death), or damage to persons or property arising out of this Agreement and founded upon or growing out of the acts or omissions of any of the employees of the University while acting within the scope of their employment where protection is afforded by Sections 893.82 and 895.46(1) of the Wisconsin Statutes. The University shall provide a copy of its standard coverage letter to the City upon request.

26. **OWNERSHIP OF CONTRACT PRODUCT.**

All of the work product, including, but not limited to, documents, materials, files, reports, data, including magnetic tapes, disks of computer-aided designs or other electronically stored data or information (the "Documents"), which the Contractor prepares pursuant to the terms and conditions of this Contract are the sole property of the City. The Contractor will not publish any such materials or use them for any research or publication, other than as expressly required or permitted by this Contract, without the prior written permission of the City. The grant or denial of such permission shall be at the City's sole discretion.

The Contractor intends that the copyright to the Documents shall be owned by City, whether as author (as a Work Made For Hire), or by assignment from Contractor to City. The parties expressly agree that the Documents shall be considered a Work Made For Hire as defined by Title 17, United States Code, Section 101(2).

As further consideration for the City entering into this Contract, the Contractor hereby assigns to City all of the Contractor's rights, title, interest and ownership in the Documents, including the right to procure the copyright therein and the right to secure any renewals, reissues and extensions of any such copyright in any foreign country. The City shall be entitled to the sole and exclusive benefit of the Documents, including the copyright thereto, and whenever required by the City, the Contractor shall at no additional compensation, execute all documents of assignment of the full and exclusive benefit and copyright thereof to the City. Any subcontractors and other independent contractors who prepare portions of the Documents shall be required by the Contractor to execute an assignment of ownership in favor of the City before commencing work.

27. **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).

28. **IT NETWORK CONNECTION POLICY.**

If this Contract includes services such as software support, software maintenance, network services, and/or system development services and will require a Network Connection the City Network (as defined in the following link), the City’s Network Connection Policy found at this link: <https://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.

29. **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.

30. **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) |
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|  |  |  | By: |  |
|  |  |  |  | (Signature) |
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|  |  |  |  |       |
|  |  |  |  | (Print Name and Title of Person Signing) |
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|  |  |  | **CITY OF MADISON, WISCONSIN** |
|  |  |  | **a municipal corporation:** |
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|  |  |  | By: |  |
|  |  |  |  | Satya Rhodes-Conway, Mayor |
|  |  |  |  |  |
|  |  |  | Date: |  |
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| **Approved:** |  |  |  |
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|  |  |  | By: |  |
|  | David P. Schmiedicke, Finance Director |  |  | Maribeth Witzel-Behl, City Clerk |
|  |  |  |  |  |
| Date: |  |  | Date: |  |
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|  |  |  | **Approved as to Form:** |
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|  |  |  |  |  |
|  | 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: |  |  | Date: |  |
|  | Mary Richards, Procurement Supervisor |  |  |  |

MGO 4.26(3) and (5) authorize the Finance Director or designee to sign a contract to purchase services rendered by a university, college, or other educational institution 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 less than $50,000. (Services rendered by a university, college, or other educational institution are exempt from competitive selection by MGO 4.26(4)(a)4. but the Finance Director designee can only sign if less than $50,000. See item (e) below.)

(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. (If over $50,000 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).)

Emergency Service contracts may also be signed by the designee of the Finance Director if the requirements of MGO 4.26(3)(c) are met.

**For City Use Only:** SIGNATURE INSTRUCTIONS FOR CONTRACT TO BE 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.