

# **CITY OF MADISON**

## **REQUEST FOR BIDS**



RFB #: 12110-0-2023-AH

Title: Portable Toilet Rentals for Parks

City Agency: Parks

Due Date: Friday, December 22, 2023  
2:00 PM CST

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## 1 NOTICE TO BIDDERS

### 1.1 Summary

The City of Madison Parks Division ("City") is soliciting Bids from providers and vendors for Portable Toilet Rentals . Vendors submitting Bids ("Bidders") are required to read this Request for Bids ("RFB") in its entirety and follow the instructions contained herein.

### 1.2 Important Dates

Deliver Bids no later than the due time and date indicated below. The City will reject late Bids:

Issue Date: Friday, December 01, 2023  
Questions Due Date: Friday, December 08, 2023  
Answers Posted Date: Friday, December 15, 2023  
Due Date: Friday, December 22, 2023 , 2:00 PM CST

### 1.3 Format

The City will not consider illegible Bids.

Elaborate Bids (i.e., expensive artwork) beyond that sufficient to present a complete and effective Bid, are not necessary or desired.

The City is requesting bids in the following format: **Electronic format only** . Electronic versions less than 20MB should be emailed to the address in section 1.5.

Complete and return Forms A through E to City of Madison Purchasing Services by Friday, December 22, 2023 , 2:00 PM CST.

### 1.4 Labeling

All Bids must be clearly labeled:	Bidder's Name and Address RFB #: 12110-0-2023-AH Title: Portable Toilet Rentals for Parks Due: Friday, December 22, 2023 , 2:00 PM CST
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All email correspondence must include RFB #12110-0-2023-AH in the subject line.

### 1.5 Delivery of Bids

Delivery of hard copies to:	City of Madison Purchasing Services City County Building, Room 407 210 Martin Luther King Jr. Blvd. Madison, WI 53703
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Delivery of electronic copy to:	via email to <a href="mailto:bids@cityofmadison.com">bids@cityofmadison.com</a> or on a commonly used media with the hard copies.
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Bids must be delivered as instructed. Deliveries to other City departments and/or locations may result in disqualification.

Note: When mailing your response via a third party delivery service, the outside of the packaging **MUST** be clearly marked with the RFB name and number. This ensures that the bid can be delivered to the correct purchasing agent without having to open the bid.

## 1.6 Appendix A: Standard Terms & Conditions

Bidders are responsible for reviewing Appendix A, the Standard Terms and Conditions, prior to submission of their bids. Appendix A applies to the submission of bids and in the absence of a signed contract becomes part of the contract terms. Part I of Appendix A provides legal terms relevant only to the submission of bids. Part II of Appendix A provides legal terms that would apply *only in the absence of a signed contract*.

## 1.7 Appendix B: Sample Contract for Purchase of Services

Bidders are responsible for reviewing Appendix B, Sample Contract, prior to submission of their bid. A contract in the form of Appendix B will serve as the basis of the contract resulting from this RFP. The resulting contract will control over any different legal terms in this RFP, Appendix A, the proposal, etc. **By submitting a proposal, Bidders affirm their willingness to enter into a contract containing the terms found in Appendix B.** While the City strives to provide the most appropriate sample contract for this RFP, the City reserves the right to modify the sample form for any resulting contract. The City does not negotiate legal terms prior to award.

## 1.8 Affirmative Action Notice

If Contractor employs 15 or more employees and does aggregate annual business with the City of \$50,000 or more for the calendar year in which the PO and/or Contract is in effect, Contractor shall file, within thirty (30) days from the PO/Contract effective date and BEFORE RELEASE OF PAYMENT, an Affirmative Action Plan designed to ensure that the Contractor provides equal employment opportunity to all and takes affirmative action in its utilization of applicants and employees who are women, minorities and/or persons with disabilities. A sample affirmative action plan, Request for Exemption forms, and instructions are available at: [www.cityofmadison.com/civil-rights/contract-compliance/vendors-suppliers/forms](http://www.cityofmadison.com/civil-rights/contract-compliance/vendors-suppliers/forms) or by contacting a Contract Compliance Specialist at the City of Madison Affirmative Action Division at (608) 266-4910. Vendors must register for an account to complete the required forms online, here: <https://elam.cityofmadison.com/citizenaccess>

Contractor shall also allow maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this PO/Contract.

Job postings: All contractors who employ 15 or more employees (regardless of the dollar amount of this contract or their annual aggregate business with the City) must notify the City of all external job openings at locations in Dane County, Wisconsin, and agree to interview candidates referred by the City or its designated organization. Job posting information is available at: <http://www.cityofmadison.com/civil-rights/programs/referrals-and-interviews-for-sustainable-employment-raise-program>. Instructions for contractors: [http://www.cityofmadison.com/civil-rights/documents/RalSE\\_Job\\_Posting\\_Instructions.pdf](http://www.cityofmadison.com/civil-rights/documents/RalSE_Job_Posting_Instructions.pdf)

The complete set of Affirmative Action requirements for this purchase can be found in **paragraph 20 of Appendix A – Standard Terms and Conditions** and, in **Section 13 of Appendix B – Sample Contract for Purchase of Services**.

## 1.9 Multiple Bids

Multiple Bids from Bidders are permitted; however, each must fully conform to the requirements for submission. Bidders must sequentially label (e.g., Bid #1, Bid #2) and separately package each Bid. Bidders may submit alternate pricing schemes without having to submit multiple Bids.

### 1.10 City of Madison Contact Information

The City of Madison Enter the City Agency is the procuring agency: Shelby Deakin  
City of Madison Parks Division  
sdeakin@cityofmadison.com

The City of Madison Purchasing Services administers the procurement function: Andy Hargianto  
Purchasing Services  
City-County Bldg, Room 407  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703-3346  
FAX: (608) 266-5948  
[bids@cityofmadison.com](mailto:bids@cityofmadison.com)

For questions regarding Affirmative Action Plans please contact: Contract Compliance  
Department of Civil Rights  
City-County Bldg., Room 523  
210 Martin Luther King, Jr. Blvd.  
Madison, WI 53703  
PH: (608) 266-4910  
[dcr@cityofmadison.com](mailto:dcr@cityofmadison.com)

The City employs spam filtering that occasionally blocks legitimate emails, holding them in ‘quarantine’ for four calendar days. The contacts listed in this RFB will acknowledge all emails received. Bidders not receiving acknowledgement within twenty-four hours shall follow-up via phone with specific information identifying the originating email address for message recovery.

### 1.11 Inquiries and Clarifications

Bidders are to raise any questions they have about the RFB document without delay. Direct all questions, **in writing**, to the Purchasing Services administrator listed in Section 1.10.

Bidders finding any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFB document shall immediately notify the Buyer and request clarification. In the event that it is necessary to provide additional clarification or revision to the RFB, the City will post addenda – see 1.12 below. Bidders are strongly encouraged to check for addenda regularly.

Bids should be as responsive as possible to the provisions stated herein. Exceptions are not permitted. The City of Madison reserves the right to disqualify any and all bids that are non-responsive or that include exceptions.

### 1.12 Addenda

In the event that it is necessary to provide additional clarification or revision to the RFB, the City will post addenda to its Bids distribution websites – see 1.13 below. It is the Bidders responsibility to regularly monitor the websites for any such postings. Bidders must acknowledge the receipt of any addenda on Form B. Failure to retrieve addenda and include their provisions may result in disqualification.

### 1.13 Bid Distribution Networks

The City of Madison posts all Request for Bids, addenda, tabulations, awards and related announcements on two distribution networks – VendorNet and DemandStar. The aforementioned documents are available **exclusively** from these websites. It is the Bidders responsibility to regularly monitor the bid distribution network for any such postings. Bidders failure to retrieve such addenda and incorporate their appropriate provisions in their response may result in disqualification. Both sites offer free registration to City Bidders.

State of Wisconsin VendorNet System:	State of Wisconsin and local agencies bid network. Registration is free. <a href="http://vendornet.state.wi.us/vendornet">http://vendornet.state.wi.us/vendornet</a>
DemandStar by Onvia:	National bid network – Free subscription is available to access Bids from the City of Madison and other Wisconsin agencies, participating in the Wisconsin Association of Public Purchasers (WAPP). A fee is required if subscribing to multiple agencies that are not included in WAPP.
Bid Opportunities:	<a href="http://www.cityofmadison.com/finance/purchasing/bidDemandStar.cfm">www.cityofmadison.com/finance/purchasing/bidDemandStar.cfm</a>
Home Page:	<a href="http://www.demandstar.com">www.demandstar.com</a>
To Register:	<a href="https://www.demandstar.com/app/registration">https://www.demandstar.com/app/registration</a>  Please note when registering: Pick the <b><u>Wisconsin Association of Public Procurement (WAPP)</u></b> to select all current Wisconsin government agencies.

#### 1.14 Local Vendor Preference

The City of Madison has adopted a local preference purchasing policy granting a scoring preference to local suppliers. Only suppliers registered as of the bid's due date will receive preference. Learn more and register at the City of Madison website: [www.cityofmadison.com/business/localPurchasing](http://www.cityofmadison.com/business/localPurchasing).

#### 1.15 Oral Presentations/Site Visits/Meetings

Bidders may be asked to attend meetings, make oral presentations, inspect City locations or make their facilities available for a site inspection as part of this RFB process. Such presentations, meetings or site visits will be at the Bidders expense.

#### 1.16 Acceptance/Rejection of Bids

The City reserves the right to accept or reject any or all Bids submitted, in whole or in part, and to waive any informalities or technicalities, which at the City's discretion is determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any Bidder responding to this request. The City expressly reserves the right to reject any and all Bids responding to this invitation without indicating any reasons for such rejection(s).

The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.

#### 1.17 Withdrawal or Revision of Bids

Bidders may, without prejudice, withdraw Bids submitted prior to the date and time specified for receipt of Bids by requesting such withdrawal before the due time and date of the submission of Bids. After the due date of submission of Bids, no Bids may be withdrawn for a period of 90 days or as otherwise specified or provided by law. Bidders may modify their Bids at any time prior to opening of Bids.

#### 1.18 Non-Material and Material Variances

The City reserves the right to waive or permit cure of nonmaterial variances in the offer if, in the judgment of the City, it is in the City's best interest to do so. The determination of materiality is in the sole discretion of the City.

### 1.19 Public Records

Bidders are hereby notified that all information submitted in response to this RFB may be made available for public inspection according to the Public Records Law of the State of Wisconsin or other applicable public record laws. Information qualifying as a “trade secret”—defined in State of Wisconsin Statutes—may be held confidential.

Bidders shall seal separately and clearly identify all information they deem to be “trade secrets,” as defined in the State of Wisconsin Statutes. Do not duplicate or co-mingle information, deemed confidential and sealed, elsewhere in your response.

#### S. 19.36(5)

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90(1)(c).

#### s. 134.90(1)(c)

(c) “Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

The City cannot ensure that information will not be subject to release if a request is made under applicable public records laws. The City cannot consider the following confidential: a bid in its entirety, price information, or the entire contents of any resulting contract. The City will not provide advance notice to Bidders prior to release of any requested record.

To the extent permitted by such laws, it is the intention of the City to withhold the contents of Bids from public view—until such times as competitive or bargaining reasons no longer require non-disclosure, in the City’s opinion. At that time, all Bids will be available for review in accordance with such laws.

### 1.20 Usage Reports

Annually, the successful Bidders shall furnish to City Purchasing usage reports summarizing the ordering history for each department served during the previous contract year. The report, at a minimum, must include each and every item or service ordered during the period, its total quantities and dollars by item/service and in total. The City reserves the right to request usage reports at any time and request additional information, if required, when reviewing contract activity.

### 1.21 Partial Award

Unless otherwise noted, it will be assumed that Bidders will accept an order for all or part of the items/services priced.

### 1.22 Tax Exempt

The City of Madison as a municipality is exempt from payment of federal excise taxes (Registration Number 008-1020421147-08) and State of Wisconsin taxes per Wisconsin statute 77.54(9a). Federal Tax ID #39-6005507. A completed Wisconsin Department of Revenue Form S-211 (R.2-00) can be found on the City website. Our tax-exempt number is ES 42916.

### 1.23 Cooperative Purchasing

Bidders may choose to extend prices offered on bids to other municipalities. Under Wisconsin Statutes, a municipality is defined as a county; city; village; town; school district; board of school directors; sewer district; drainage district; vocational, technical and adult education district; or any other public or quasi-public corporation, officer, board or other body having the authority to award public contracts. This is known as “cooperative” or “piggyback” purchasing, a practice common amongst units of government. The City is not responsible for any contract resulting from a cooperative purchase using this RFB as a basis; they are made solely between the bidders and third party unit of government.

### 1.24 Bidders Responsibility

Bidders shall examine this RFB and shall exercise their judgment as to the nature and scope of the work required. No plea of ignorance concerning conditions or difficulties that exist or may hereafter arise in the execution of the work under the resulting contract, as a consequence of failure to make necessary examinations and investigations, shall be accepted as an excuse for any failure or omission on the part of the Bidders to fulfill the requirements of the resulting contract.



## 2 DESCRIPTION OF SERVICES/COMMODITIES

City of Madison Parks division is seeking to create a contract for the rental of portable toilets and wash stations (standard and ADA compliant) on a daily, weekly and monthly basis. Portable toilets and wash stations shall be delivered, as requested, to various sites within the City and must be maintained and serviced as stipulated in the contract and as requested.

### 2.1 Intent

The intent of this bid is to describe the services needed for the rental of portable toilets. The services to be provided under this agreement will consist of, but not be limited to, furnishing, servicing, cleaning, moving and removing portable toilets from various locations throughout the City.

### 2.2 Contract Term

The initial contract term shall be for three (3) years beginning approximately March 1, 2024 and ending February 29, 2027. This contract contains two (2) additional one-year extension periods that the City and Contractor (successful bidder that has signed a contract with the City) may, upon mutual consent, exercise.

### 2.3 Pricing

Pricing shall be firm throughout the initial term of the contract. Pricing for optional extension periods (as listed on the Bid Form D) will also be firm throughout each period.

Currently the City is renting approximately 20 compliant units, serviced once or twice per week, and rents various units for special events. Numerous servicing requirements are listed on the Price Excel Workbook, for potential future needs.

Additionally, standard units and wash stations may be needed in various quantities at various locations and dates for special events. As we have seen with the Covid-19 pandemic, the public needs for portable toilets and wash stations can change quickly. Please provide pricing on all listed items.

### 2.4 Specifications

1. Each standard portable must be standard size – single person use. This should be at our about 44'x48'x90'.
  - a. ADA compliant toilets must meet current ADA standards.
  - b. Wash stations shall have at least two (2) basins, soap dispensers and towels.
2. Each portable must be well lit with natural light and properly ventilated.
  - a. Each portable must provide waterless hand sanitizer and/or waterless soap and dispenser(s). Sanitizer and/or soap must meet all OSHA requirements.
  - b. Each portable must provide means of protecting toilet paper from moisture and vandals; and must be able to secure two or more rolls of tissue.
  - c. Each portable must be sanitized and deodorized prior to delivery and at each service per the schedule outlined in this agreement.
  - d. Each Service shall include but not be limited to the following:
    - i) Empty holding tank
    - ii) Clean and sanitize all interior services
    - iii) Refill tissue paper
    - iv) Refill hand sanitizer/soap
    - v) Deodorize the unit

- vi) Clean the outside
  - vii) Clean up any spillage
  - viii) Remove any graffiti
7. Each portable must be kept in good condition for the term of this agreement and meet all OSHA safety standards.
  8. Each portable must be delivered and/or serviced within 24 hours of the request for delivery and/or service.
  9. Each portable must be anchored to prevent tipping over caused by wind or vandalism. The cost of anchoring will be included in the rental price. Note: Anchoring method must be approved by the requesting City Agency.
  10. Damage to the portable caused by vandalism during the rental period will be shared equally by the City of Madison and the vendor.
  11. Special Events requests will be submitted with a 5-day notice of need.
  12. Emergency placement of units must occur within 5 hours or less of request, seven (7) days a week.

## 2.5 Schedule of Placement

Please reference Appendix C for the current placement of portable toilets. This schedule is subject to change.

### **3 REQUIRED INFORMATION AND CONTENT OF BIDS**

#### **3.1 Required RFB Forms**

The following forms must be included in your submission, to be considered:

Form A: Signature Affidavit

Form B: Receipt of Forms and Submittal Checklist

Form C: Vendor Profile

Form D: Cost Proposal Form

Form E: References

**END OF DOCUMENT**



## Form A: Signature Affidavit

**RFB #: 12110-0-2023-AH Portable Toilet Rentals for Parks**

*This form must be returned with your response.*

In signing Proposals, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise take any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit Proposals, that Proposals have been independently arrived at, without collusion with any other Proposers, competitor or potential competitor; that Proposals have not been knowingly disclosed prior to the opening of Proposals to any other Proposers or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this Proposals, hereby agrees with all the terms, conditions, and specifications required by the City in this Request for Proposals, declares that the attached Proposals and pricing are in conformity therewith, and attests to the truthfulness of all submissions in response to this solicitation.

Proposers shall provide the information requested below. Include the legal name of the Proposers and signature of the person(s) legally authorized to bind the Proposers to a contract.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME OF PERSON SIGNING



## Form B: Receipt of Forms and Submittal Checklist

**RFB #: 12110-0-2023-AH Portable Toilet Rentals for Parks**

*This form must be returned with your response.*

Proposers hereby acknowledge the receipt and/or submittal of the following forms:

Forms	Initial to Acknowledge SUBMITTAL	Initial to Acknowledge RECEIPT
Description of Services/Commodities	N/A	
Form A: Signature Affidavit		
Form B: Receipt of Forms and Submittal Checklist		
Form C: Vendor Profile		
Form D: Cost Proposal		
Form E: References		
Appendix A: Standard Terms & Conditions	N/A	
Appendix B: Contract for Purchase of Services	N/A	
Addendum #		
Addendum #		
Addendum #		
Addendum #		

VENDOR NAME

COMPANY NAME



## Form C: Vendor Profile

**RFB #: 12110-0-2023-AH Portable Toilet Rentals for Parks**

*This form must be returned with your response.*

### COMPANY INFORMATION

COMPANY NAME (Make sure to use your complete, legal company name.)			
FEIN		(If FEIN is not applicable, SSN collected upon award)	
CONTACT NAME (Able to answer questions about proposal.)		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS	CITY	STATE	ZIP

### AFFIRMATIVE ACTION CONTACT

The successful Contractor, who employs more than 15 employees and whose aggregate annual business with the City for the calendar year, in which the contract takes effect, is more than twenty-five thousand dollars (\$25,000), will be required to comply with the City of Madison Affirmative Action Ordinance, Section 39.02(9) within thirty (30) days of award of contract.

CONTACT NAME		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS	CITY	STATE	ZIP

### ORDERS/BILLING CONTACT

Address where City purchase orders/contracts are to be mailed and person the department contacts concerning orders and billing.

CONTACT NAME		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS	CITY	STATE	ZIP

### LOCAL VENDOR STATUS

The City of Madison has adopted a local preference purchasing policy granting a scoring preference to local suppliers. Only suppliers registered as of the bid's due date will receive preference. Learn more and register at the City of Madison website.

CHECK ONLY ONE:

- ☐ **Yes**, we are a local vendor **and** have registered on the City of Madison website under the following category: \_\_\_\_\_ [www.cityofmadison.com/business/localPurchasing](http://www.cityofmadison.com/business/localPurchasing)
- ☐ **No**, we are not a local vendor or have not registered.



## Form D: Cost Proposal

**RFB #: 12110-0-2023-AH Portable Toilet Rentals for Parks**

*This form must be returned with your response.*

Prepare the fee proposal as all inclusive, not-to-exceed, fixed fees:

- All Inclusive – Covers all direct and indirect necessary expenses including but not limited to; travel, telephone, copying and other out-of-pocket expenses.
- Not To Exceed – The actual fees shall not exceed the amount specified in fee proposal.
- Fixed Fee – All prices, rates, fees and conditions outlined in the proposal shall remain fixed and valid for the entire length of the contract and any/all renewals.

Any pricing increases or additions must be agreed upon in writing by both parties.

### **Part 1**

Please complete the Excel Workbook Form D: Pricing that is attached separately.

### **Part 2**

Please complete the questions below. Feel free to use separate or additional pages.

1. Guaranteed Delivery time for Emergency Placement: \_\_\_\_\_ (hours)
2. Explain how you will accommodate and respond to emergency requests:
3. Hours of Availability – List the hours during which the City can reach a live representative (E.g. 6am – 9pm M-F):

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COMPANY NAME



## Form E: References

**RFB #: 12110-0-2023-AH Portable Toilet Rentals for Parks**

*This form must be returned with your response.*

Please list three references that are **NOT** from the City of Madison. If you wish to highlight any additional work experience for the City of Madison, please list it on a separate page.

REFERENCE #1 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

REFERENCE #2 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

COMPANY NAME



<b>REFERENCE #3 – CLIENT INFORMATION</b>			
COMPANY NAME		CONTACT NAME	
ADDRESS		CITY	STATE ZIP
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
CONTRACT PERIOD		YEAR COMPLETED	TOTAL COST
DESCRIPTION OF THE PERFORMED WORK			

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COMPANY NAME



## CITY OF MADISON

1. General. Throughout this document, "City of Madison," "City" and "Purchasing" shall be synonymous and mean the City of Madison. The words "bid" and "proposal" are synonymous, as are the words "bidder," "proposer" and "contractor." The phrases "request for proposal," "invitation for bids," "request," "invitation," and "solicitation" shall also be synonymous.  
As applied to the winning or selected bidder, the words "bid," "proposal," and "contract" are synonymous.
2. Entire Agreement, Order of Precedence. These standard terms and conditions shall apply to any Purchase Order issued as a result of this Request for Bid/Proposal, except where expressly stated otherwise in the RFP or in a written instrument covering this purchase signed by an authorized representative of the City and the Contractor, in a form approved by the City Attorney (a "Separate Contract"). If such a separate contract is executed it shall constitute the entire agreement and no other terms and conditions, whether oral or written, shall be effective or binding unless expressly agreed to in writing by the City.  
If a Separate Contract is not executed, these Standard Terms and Conditions, the City's request for proposals, the version of the vendor's bid that was accepted by the City, and the City's Purchase Order (if any) shall constitute a contract and will be the entire agreement.  
Order of Precedence: If there is a conflict between this Section A and any terms in the vendor's accepted bid or proposal, this Section A shall control unless the parties expressly agree to another order of precedence, in writing. If there is a conflict between this Section A and a Separate Contract, the terms and conditions of the Separate Contract shall control.
- I. **TERMS FOR SUBMISSION OF BIDS: The following section applies to the bid/selection process only.**
3. This invitation for bids does not commit the City to award a contract, pay any costs incurred in preparation of bids, or to procure or contract for services or equipment. The City may require the bidder to participate in negotiation and to submit such additional price or technical or other revisions to his or her bids as may result from negotiation. The bidder shall be responsible for all costs incurred as part of his or her participation in the pre-award process.  
The City reserves the right to accept or reject any or all bids submitted, in whole or in part, and to waive any informalities or technicalities which at the City's discretion are determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any offeror responding to this request. The City expressly reserves the right to reject any and all bids responding to this invitation without indicating any reasons for such rejections(s).  
The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.
4. Addenda. Changes affecting the specifications will be made by addenda. Changes may include, or result in, a postponement in the bid due date. Bidders are required to complete the Bidder Response Sheet, acknowledging receipt of all parts of the bid, including all addenda.
5. Price Proposal. All bidders are required to identify the proposed manufacturer and model, and to indicate the proposed delivery time on the attached Proposal Form. Failure to do so may cause the bid to be considered not responsive. If desired, the bidder may include product literature and specifications. The price quoted will remain firm throughout each contract period. Any price increase proposed shall be submitted sixty (60) calendar days prior to subsequent contract periods and shall be limited to fully documented cost increases to the bidder which are demonstrated to be industry-wide.
6. Price Inclusion. The price quoted in any bid shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the furnishing and delivery of equipment or services pursuant to the specifications attached thereof. Any items omitted from the specifications which are clearly necessary for the completion of the project shall be considered a portion of the specifications although not directly specified or called for in these specifications.
7. Pricing and Discount.
  - a. Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea., etc.) as stated on the bid/proposal or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price. If an apparent mistake exists in the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
  - b. In determination of award, discounts for early payment will only be considered when all other conditions are equal. Early payment is defined as payment within fifteen (15) days providing the discount terms are deemed favorable. All payment terms must allow the option of Net 30.
8. F.O.B. Destination Freight Prepaid. Bid prices must include all handling, transportation and insurance charges. Failure to bid FOB Destination Freight Prepaid may disqualify your bid.
9. Award.
  - a. The City will have sole discretion as to the methodology used in making the award. Where none is specified, the award will be made to the lowest responsible bidder in compliance with the specifications and requirements of this solicitation.
  - b. The right is reserved to make a separate award of each item, group of items or all items, and to make an award in whole or in part, whichever is deemed in the best interest of the City.
10. Responsiveness and Responsibility. Award will be made to the responsible and responsive bidder whose bid is most advantageous to the City with price and other factors considered. For the purposes of this project, responsiveness is defined as the bidder's conformance to the requirements of the solicitation. Being not responsive includes the failure to furnish information requested.  
Responsibility is defined as the bidder's potential ability to perform successfully under the terms of the proposed contract. Briefly, a responsible bidder has adequate financial resources or the ability to obtain said resources; can comply with required delivery taking into

account other business commitments; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and has the necessary organization, experience and technical skills.

The City reserves the right to refuse to accept any bid from any person, firm or corporation that is in arrears or is in default to the City, or has failed to perform faithfully any previous contract with the City. If requested, the bidder must present within five (5) working days evidence satisfactory to the City of performance ability and possession of necessary facilities, financial resources, adequate insurance, and any other resources required to determine the bidder's ability to comply with the terms of this solicitation document.

11. Cancellation.

- a. The City reserves the right to cancel this bid, in whole or in part, at any time for any reason. The City may, in its sole discretion and without any reason, cancel or terminate any contract or purchase order awarded as a result of this bid, in whole or in part, without penalty, by providing ten (10) days written notice thereof to the contractor.
- a. In the event the Bidder shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue unremedied for a period of ten (10) days after written notice to the Bidder, the City may, at its option and in addition to all other rights and remedies which it may have, terminate the Agreement and all rights of the Bidder under the Agreement.
- b. Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel and terminate the contract without notice.

**II. CONDITIONS OF PURCHASE: The following section applies to purchases/contracts after the award. See Paragraphs 1 & 2 for applicability and order of precedence.**

12. Specifications.

- a. All bidders must be in compliance with all specifications and any drawings provided with this solicitation. Exceptions taken to these specifications must be noted on your bid.
- b. When specific manufacturer and model numbers are used, they are to establish a design, type, construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and the bidder/proposer is responsible for providing sufficient information to establish equivalency. The City shall be the sole judge of equivalency. Bidders are cautioned to avoid bidding alternates which do not meet specifications, which may result in rejection of their bid/proposal.

13. Regulatory Compliance.

- a. Seller represents and warrants that the goods or services furnished hereunder, including all labels, packages, and container for said goods, comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act (OSHA), as amended, with respect to design, manufacture or use for their intended purpose of said goods or services. Seller shall furnish Material Safety Data Sheets (MSDS) whenever applicable.
- b. If it is determined by the City that such standards are not met, the seller agrees to bear all costs required to meet the minimum standards as stated above for the equipment/products furnished under this contract.

14. Warranty. Unless otherwise specifically stated by the bidder, products shall be warranted against defects by the bidder for ninety (90) days from the date of receipt. If bidder or manufacturer offers warranty that exceeds 90 days, such warranty shall prevail.

15. Ownership of Printing Materials. All artwork, camera-ready copy, negative, dies, photos and similar materials used to produce a printing job shall become the property of the City. Any furnished materials shall remain the property of the City. Failure to meet this requirement will disqualify your bid.

16. Item Return Policy. Bidder will be required to accept return of products ordered in error for up to twenty-one (21) calendar days from date of receipt, with the City paying only the return shipping costs. Indicate in detail on the Bidder Response Sheet, your return policy.

17. Payment Terms and Invoicing. The City will pay properly submitted vendor invoices within thirty (30) days of receipt, providing good and/or services have been delivered, installed (if required), and accepted as specified.

- a. Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.
- b. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order and submittal to the correct address for processing. Invoice payment processing address is shown on the upper middle section of the purchase order. Send invoices to Accounts Payable address on the purchase order. Do not send invoices to Purchasing or ship to address.
- c. Bidders, proposers shall include discounts for early payment as a percent reduction of invoice. Invoice discounts shall be determined where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.
- d. Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.

18. F.O.B. Destination Freight Prepaid. Unless otherwise agreed in writing, the vendor shall bear all handling, transportation and insurance charges. Title of goods shall pass upon acceptance of goods at the City's dock.

19. **Tax Exemption.** The City of Madison is exempt from the payment of Federal Excise Tax and State Sales Tax. **The City Tax Exempt number is ES 42916.** Any other sales tax, use tax, imposts, revenues, excise, or other taxes which are now, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the bidder's bid and which, by terms of the tax law, may be passed directly to the City, will be paid by the City.

20. **Affirmative Action.**

**A. The following language applies to all successful bidders 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. 20.A.) at the time the Request for Exemption in 20.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 \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or less	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 20.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. 20.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 for the calendar year in which the contract is in effect. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 20.B.(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.**

(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 is in 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.)

21. 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.

22. Prevailing Wage. Where applicable under federal law, the Contractor warrants that prevailing wages will be paid to all trades and occupations.
23. Indemnification. **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 damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of Contractor and any of Contractor's subcontractors in the performance of this agreement, whether caused by or contributed to by the negligence of the City or its officers, officials, agents or employees.**
24. 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.
- a. Commercial General Liability - The Contractor shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, 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 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.
  - b. Automobile Liability - The Contractor shall procure and maintain during the life of this contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
  - c. 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.
  - d. Professional Liability - The Contractor shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. 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 Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.
  - e. 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.
  - f. 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 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.
25. Work Site Damages. Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.
26. Compliance.
- a. Regulations. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.
  - b. Licensing and Permits. The Contractor selected under this bid shall be required to demonstrate valid **possession of appropriate required licenses and will** keep them in effect for the term of this contract. The Contractor shall also be required, when appropriate, to obtain the necessary building permits prior to performing work on City facilities.
27. Warranty of Materials and Workmanship.
- a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades.
  - b. Work not conforming to these warranties shall be considered defective.

c. This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.

28. Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of the City notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this contract and its specifications.
29. Reservation of the Right to Inspect Work. At any time during normal business hours and as often as the City may deem necessary, the Contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at any time during the duration of this contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, contract requirements and specifications.
30. Sweatfree Procurement of Items of Apparel. If this bid results in the procurement of \$15,000 or more in garments or items of clothing, any part of which is a textile, or any shoes/ footwear, then Sec. 4.25 of the Madison General Ordinances, "Procurement of Items of Apparel", is hereby incorporated by reference and made part of this contract. See Section 4.25(2) at [www.municode.com](http://www.municode.com) for applicability specifics. The contractor shall follow labor practices consistent with international standards of human rights, meaning that, at a minimum, contractor shall adhere to the minimum employment standards found in Section 4.25 and shall require all subcontractors and third-party suppliers to do the same. For purposes of sec. 4.25, "Subcontractor" means a person, partnership, corporation or other entity that enters into a contract with the contractor for performance of some or all of the City-contracted work and includes all third-party suppliers or producers from whom the contractor or its contractors obtains or sources goods, parts or supplies for use on the city contract and is intended to include suppliers at all level of the supply chain. The standards in Sec. 4.25 shall apply in all aspects of the contractor's and subcontractor's operations, including but not limited to, manufacture, assembly, finishing, laundering or dry cleaning, (where applicable), warehouse distribution, and delivery. Contractor acknowledges that by entering into this contract, Contractor shall be subject to all of the requirements and sanctions of sec. 4.25 of the Madison General Ordinances.
- The sanctions for violating Sec. 4.25 under an existing contract are as follows:
- Withholding of payments under an existing contract.
  - Liquidated damages. The contractor may be charged liquidated damages on an existing contract of two thousand dollars (\$2,000) per violation, or an amount equaling twenty percent (20%) of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the City demonstrates were produced in violation of the contract and/or this ordinance per violation; whichever is greater.
  - Termination, suspension or cancellation of a contract in whole or in part.
  - Nonrenewal when a contract calls for optional renewals.
  - Nonrenewal for lack of progress or impossible compliance. The City reserves the right to refuse to renew the contract that calls for optional renewals, when the contractor cannot comply with the minimum standard under (4)(b) and the noncompliance is taking place in a country where:
    - Progress toward implementation of the standards in this Ordinance is no longer being made; and
    - Compliance with the employment standards in the Ordinance is deemed impossible by the City and/or any independent monitoring agency acting on behalf of the City. Such determination shall be made in the sole opinion of the City and may be based upon examination of reports from governmental, human rights, labor and business organizations and after consultation with the relevant contractors and sub-contractors and any other evidence the City deems reliable.
  - Disqualification of the contractor from bidding or submitting proposals on future City contracts, or from eligibility for future city procurements as defined in sub. (2), whether or not formal bidding or requests for proposals are used, for a period of one (1) year after the first violation is found and for a period of three (3) years after a second or subsequent violation is found. The disqualification shall apply to the contractor who committed the violation(s) whether that be under the same corporate name, or as an individual, or under the name of another corporation or business entity of which he or she is a member, partner, officer, or agent.
- The exercise by the City of any or all of the above remedies, or failure to so exercise, shall not be construed to limit other remedies available to the City under this Contract nor to any other remedies available at equity or at law.
31. Local Purchasing. The City of Madison has adopted a local preference purchasing policy granting a 5 percent request for proposal and 1 percent request for bid scoring preference to local vendors.
- To facilitate the identification of local suppliers, the City has provided an on-line website as an opportunity for suppliers to voluntarily identify themselves as local, and to assist City staff with their buying decisions. Proposers seeking to obtain local preference are required to register on the City of Madison online registration website. Only vendors registered as of the bid due date will receive preference. Additional information is available at: <https://www.cityofmadison.com/finance/purchasing/local-businesses/register-business/>.
32. 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). This section does not apply to employees who are required to carry a weapon under the express terms of the Contract (such as armed security guard services, etc.).
33. Software & Technology Purchases.
- Software Licenses. All software license agreements shall include the City's mandatory legal terms and conditions as determined by the City Attorney. Please be advised that no City employee has the authority to bind the City by clicking on an End User License Agreement (EULA) or any other click-through terms and conditions without being specifically authorized by the City's Chief Information Officer through procedures approved by the City Attorney and Risk Manager. All legal documents associated with the purchase or download of software must be reviewed by the City Attorney and may only be signed by an individual authorized to do so.

- b. Network Connection Policy. If this purchase includes 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: [www.cityofmadison.com/attorney/documents/posNetworkConnection.doc](http://www.cityofmadison.com/attorney/documents/posNetworkConnection.doc) is hereby incorporated and made a part of the Contract and Contractor agrees to comply with all of its requirements.

34. Ban the Box - Arrest and Criminal Background Checks.

This provision applies to service contracts of more than \$25,000 executed by the City on January 1, 2016 or later, unless exempt by Sec. 39.08 of the Madison General Ordinances (MGO).

- a. Definitions. For purposes of this requirement, "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 any contract awarded under this RFP, the successful 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 a 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 background check in question. If so, the contractor is exempt from this section for the position(s) in question.





## INSTRUCTIONS FOR CONTRACTOR

**DO NOT ATTACH TO CONTRACT**

***Your contract MUST include the following information,  
or it will not be signed by the City.***

- ☐ Check one box at top of Page 1 for the type of business entity.
- ☐ Sections 3 & 4 will be completed by the City and should be complete before you sign.
- ☐ Put a name in Sec. 7.A. – person responsible for administering the 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>.

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 the person at your organization to receive legal notices under the contract.
- ☐ Signature line. A person with authority to bind the organization should sign, date, and print 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.
- ☐ Enclose CERTIFICATE OF INSURANCE (C.O.I.) showing proof of insurance required by Sec. 27.

**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 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) enclose hard copy of certificate with hard copies of contract mailed to the address in Section 15 of the contract, or (b) email certificate to City Risk Manager Eric Veum at: [eveum@cityofmadison.com](mailto:eveum@cityofmadison.com) and cc: your City contact person on the email. Call Eric Veum at (608) 266-5965 with insurance questions.

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

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SAMPLE

# City of Madison

## CONTRACT FOR PURCHASE OF 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 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 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.

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 of Contractor.

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 25, at its option.

8. **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 specified in Section 3, 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 24 of this Agreement, and at such other times as the City may specify, unless another procedure is specified in Section 3.
- 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 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.

10. **EXTRA SERVICES.**

The City may require the Contractor to perform extra services or decreased services, according to the procedure set forth in Section 24. 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. **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. **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 \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or less	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 for the calendar year in which the contract is in effect. 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, BEGINNING IN 2019.

(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 is in 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 registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY:

\_\_\_\_\_  
(Department or Division Head)

FOR THE CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.** 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.

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, 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.

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

This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district 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. **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.

23. **COMPENSATION.**

It is expressly understood and agreed that in no event will the total compensation under this Contract exceed \$\_\_\_\_\_.

24. **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 23 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 for unsatisfactory performance by the Contractor.

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 15, 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 15 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.

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.**

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 damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, 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, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.

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.

Automobile Liability

The Contractor shall procure and maintain during the life of this Contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.

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 Liability

The Contractor shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. 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 Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

**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. **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.



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 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: <http://www.cityofmadison.com/attorney/documents/posNetworkConnection.doc> is hereby incorporated and made a part of this Contract and Contractor agrees to comply with all of its requirements.
32. **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.
33. **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.

**CONTRACTOR:**

\_\_\_\_\_  
(Type or Print Name of Contracting Entity)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title of Person Signing)

Date: \_\_\_\_\_

**CITY OF MADISON, WISCONSIN  
a municipal corporation:**

By: \_\_\_\_\_  
Satya Rhodes-Conway, Mayor

Date: \_\_\_\_\_

**Approved:**

\_\_\_\_\_  
David P. Schmiedicke, Finance Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk

Date: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
Eric T. Veum, Risk Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael Haas, City Attorney

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).
- (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 bidding. (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.

## APPENDIX C: PLACEMENT OF PORTABLE TOILETS

Please note that all locations and frequency of cleaning is subject to change.

Park Name	Unit Location	# of units	Dates	Services Per Year	Type	Notes
Brittingham	Shelter	1	Mid-Oct. thru Mid-April	26	ADA Compliant	Used by fishermen and other users during off season of shelter reservations
Brittingham	Beach House	1	All Year	52	ADA Compliant	
Brittingham	Boat House	1	All Year	52	ADA Compliant	
Cypress Spray	Inside Drive Gate	1	Memorial Day Weekend - Labor Day Weekend	12	ADA Compliant	Inside Fenced area
Demetral	Shelter	1	4/1-10/30	26	ADA Compliant	
Door Creek	Littlemore Dr. Pkg Lot	1	All Year	52	ADA Compliant	
Franklin Skating	Shelter	1	Skating Season	10	ADA Compliant	Skating Season varies. Parks will call
Garner	Shelter	1	4/1-4/15	2	ADA Compliant	
Goodman Softball	Diamond #2	1	4/1-10/25	26	ADA Compliant	
Haen Family Park	Near Shelter	1	6/17-8/19	26	ADA Compliant	
Heritage Heights	Shelter	1	Skating Season	10	ADA Compliant	Skating Season varies. Parks will call
Heistand	Parking Lot	1	4/1-10/25	26	ADA Compliant	
Heistand	Backstop	1	4/15-10/25	26	ADA Compliant	
Law	E. of Conv. Ctr	1	Memorial Day Weekend - 10/25	20	ADA Compliant	
Quann	Tennis Court	1	3/15-10/25	28	ADA Compliant	
Rennebohm	Shelter	1	Skating Season -4/15	10	ADA Compliant	Skating Season varies. Parks will call
Warner	Soccer	1	4/1-10/25	26	ADA Compliant	

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Please note that all locations and frequency of cleaning is subject to change.

Walnut Grove	Tennis Court	1	4/1-10/25	26	ADA Compliant	
Wexford	Tennis Court	1	4/1-10/25	26	ADA Compliant	
Yahara Golf Course	Winter Disc Golf	1	Winter Golf Season	14	ADA Compliant	