



CITY OF SUN PRAIRIE

CONTRACT FOR

CONSTRUCTION SERVICES

Contract #: 23-BM09

Title: City Hall Heat Pump Replacement

Department: Building Maintenance

Start Date: Saturday, July 1, 2023

End Date: Wednesday, November 1, 2023

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CONTRACT FOR PURCHASE OF SERVICES

I. NOTICE TO CONTRACTORS

A. PARTIES

This is a contract between the City of Sun Prairie, located in Dane County, Wisconsin, hereinafter referred to as “City”, and [Click or tap here to enter text.](#) of [Click or tap here to enter text.](#), [Click or tap here to enter text.](#) hereinafter referred to as “Contractor”.

The Contractor is a:

(To be completed by Contractor and copy of Contractor’s W9 shall be given to the City of Sun Prairie Finance Department)

- ☐ Corporation
- ☐ General Partnership
- ☐ Limited Liability Company
- ☐ LLP
- ☐ Sole Proprietor
- ☐ Unincorporated Association
- ☐ Other: _____

B. PURPOSE

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

C. 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): Vendor’s Bid Form and the Special Provisions outlined in the Request for Bid

D. TERM AND EFFECTIVE DATE

This contract shall become effective upon execution by the Mayor, on behalf of the City of Sun Prairie, 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 Sun Prairie. The term of this contract shall be from **Saturday, July 1, 2023** to **Wednesday, November 1, 2023** with the option to extend for one (1) additional year period upon the same or more favorable terms and conditions, and under mutual agreement of both parties.

E. 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.

F. ASSIGNABILITY/SUBCONTRACTING

Contractor shall not assign or subcontract any interest of obligation under this contract without the City's prior written approval. All of the services required hereunder will be performed by the Contractor and employees of the Contractor.

G. DESIGNATED REPRESENTATIVE

Contractor designates [Click or tap here to enter text.](#) as contract agent with primary responsibility for the performance of this contract. In case this contract agent is replaced by another for any reason, the Contractor will designate another contract agent within seven (7) calendar days of the time the first terminates his or her employment or responsibility using the procedure set for in Section O, Notices.

In the event of the death, disability, removal or resignation of the person designated above as the contract agent, the City may accept another person as the contract agent or may terminate this agreement under Section Y, at its option.

H. PROSECUTION AND PROGRESS

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

The Contractor shall complete the services under this agreement within the time for completion specified in the Scope of Services, including any amendments. The Contractor's services are completed when the City notifies the Contractor in writing that the services are complete and are acceptable. The time for completion shall not be extended because of any delay attributable to the Contractor, but 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.

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

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

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.

I. 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.

J. EXTRA SERVICES

The City may require the Contractor to perform extra services or decreased services, according to the procedure set forth in Section X. 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 C, 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 W, unless the contract is amended as provided in Section I above.

K. 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.

L. NON-DISCRIMINATION

In the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment regardless of age, ancestry, arrest and conviction record, color, creed, disability, genetic testing, honest testing, marital status, membership in the National Guard, State Defense Force or any reserve component of the military forces of the United States or this state, national origin, pregnancy or childbirth, race, religion, sex (including sexual harassment), sexual orientation, and use or nonuse of lawful products off of the employer's premises during nonworking hours.

M. AFFIRMATIVE ACTION

The following language applies to all contractors employing fifteen (15) or more employees:

The Contractor agrees that, within thirty (30) days after the effective date of this contract, the Contractor will provide to the City of Sun Prairie Finance 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 City of Sun Prairie Finance Department no later than one year after the date on which the first form was required to be provided.

Articles of Agreement, Request for Exemption, and Release of Payment

The Articles of Agreement beginning on the next page apply to all Contractors, unless determined to be exempt under the following table and procedures:

Number of Employees	Less than \$25,000 Aggregate Annual Business with the City*	\$25,000 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

Exempt Status: In this section, “Exempt” means the Contractor is exempt from the Articles of Agreement in Section M (5) shall apply and contractor shall select option A or B under Article 4 therein and file an Affirmative Action Plan.

Request for Exemption – Fewer than 15 Employees: Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the City of Sun Prairie Finance Department within thirty (30) days of the effective date of this contract.

Exemption – Annual Aggregate Business: The City of Sun Prairie Finance Department will determine, at the time this contract is presented for signature, if the Contractor is exempt because it will have less than \$25,000 in annual aggregate business with the City in the calendar year. Contractors with 15 or more employees will lose this exemption and become subject to Section M (5) upon reaching \$25,000 or more annual aggregate business with the City within the calendar year.

Release of Payment: All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article 4 below on file with the City of Sun Prairie Finance 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 City of Sun Prairie Finance Department within thirty (30) days of the effective date and prior to release of payment by the City.

Articles of Agreement

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that all applicants are employed, and that employees are treated during employment without regard to age, ancestry, arrest and conviction record, color, creed, disability, genetic testing, honest testing, marital status, membership in the National Guard, State Defense Force or any reserve component of the military forces of the United States or this state, national origin, pregnancy or childbirth, race, religion, sex (including sexual harassment), sexual orientation, and use or nonuse of lawful products off of the employer's premises during nonworking hours 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 of the nondiscrimination clauses in this contract.

ARTICLE II

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

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

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 Sun Prairie ordinances or it has prepared and has on file a model affirmative action plan approved by the City of Sun Prairie Finance Department.

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 the City of Sun Prairie within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the City of Sun Prairie Finance Department.

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 the 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 policy of the City of Sun Prairie, 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 City of Sun Prairie Finance Department.

ARTICLE VI

The Contractor will maintain records as required by the City of Sun Prairie and will provide the City of Sun Prairie Finance Department with access to such records and to persons who have relevant and necessary information. 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 or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract, it is agreed that the City at its option may do any or all of the following:

Cancel, terminate or suspend this contract in whole or part.

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

Recover on behalf of the City from the 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 five percent (5%) of the contract price, or five thousand dollars (\$5,000), 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.

N. 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.

O. 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, to the addresses of the parties listed below:

FOR THE CITY:

Click or tap here to enter text.

Click or tap here to enter text.

Sun Prairie, WI 53590

FOR THE CONTRACTOR:

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

P. STATUS OF CONTRACTOR/INDEPENDENT/TAX FILING

It is agreed that the Contractor is an independent Contractor and not an employee of the City, and that any persons who the Contractor utilizes and provides services under this contract are employees of the Contractor and are not employees of the City of Sun Prairie.

Contractor shall provide its taxpayer identification number (or social security number) to the City of Sun Prairie Finance Department, 300 East Main Street, Sun Prairie, WI. 53590, prior to payment. The Contractor is informed that as an independent contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that s/he may be subject to civil and/or criminal penalties if she/he fails to properly report income and pay taxes and social security taxes on the amount received under this contract.

Q. GOODWILL

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

R. 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.

S. 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 service 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.

T. 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 suite 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.

U. 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.

V. CONFLICT OF INTEREST

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. 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.

W. COMPENSATION

It is expressly understood and agreed that in no event with the total compensation for services under this contract exceed \$ [Click or tap here to enter text..](#)

X. BASIS FOR PAYMENT

GENERAL

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 W 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.

The Contractor shall submit invoices, in the form or format approved by the City, specified in the Scope of Services, Section C of this contract. The City will pay the Contractor in accordance with the schedule set forth in the Scope of Services. The final invoice shall be submitted to the City within three months of completion of services under this Agreement.

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

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

Final payment of any balance due the Contractor will be made upon accepted 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.

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.

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

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

SERVICE ORDERS, EXTRA SERVICE, OR DECREASED SERVICE

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

The City may, by written order, request extra services or decreased services, as defined in Section J 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 C of this Agreement, including any amendments under Section I of this Agreement.

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 O 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.

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.

Y. DEFAULT/TERMINATION

In the event the Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unresolved 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.

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 within 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.

Z. INDEMNIFICATION

To the fullest extent allowable by law, Contractor hereby indemnifies and shall defend and hold harmless City of Sun Prairie, its elected and appointed officials, officers, employees, or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement regardless if liability without fault is sought to be imposed on City of Sun Prairie. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City of Sun Prairie, its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of Sun Prairie, or any of its directors, officers, employees, or authorized representatives or volunteers by an employee of the Consultant, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge, or otherwise reduce and other right or obligation of indemnity that would otherwise exist as to the City of Sun Prairie under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

Contractor shall reimburse City of Sun Prairie, its elected and appointed officials, officers, employees, or authorized representatives or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City of Sun Prairie, or any of its elected and appointed officials, officers, employees or authorized representatives or volunteers.

AA. LAWS, REGULATIONS AND PERMITS

The Contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the project. The Contractor shall also be liable for all violations of the law in connection with work furnished by the Contractor. If the Contractor observes that the drawings or specifications are at variance with any law or ordinance, rule or regulation, he/she shall promptly notify the City of Sun Prairie engineer in writing and any necessary changes shall be made by written instruction or change order. If the Contractor performs any work that it knew or should have known to be contrary to such laws, ordinances, rules or regulations and without giving notice to the City of Sun Prairie engineer, the Contractor shall bear all costs arising therefrom.

BB. SAFETY AND SECURITY

The Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. The Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work.

In carrying out its work, the Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed, and be in compliance with all applicable federal, state and local statutes and regulatory requirements including Wisconsin labor Code; and the U.S. Department of Transportation Omnibus transportation employee Testing Act. Safety precautions, as applicable, shall include but not be limited to: adequate life protection and life-saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection, and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries, or illnesses; and adequate facilities for the proper inspection and maintenance of safety measures.

The Contractor shall be responsible for the safeguarding of all utilities. At least two working days before beginning work, the Contractor shall call the "Diggers Hotline" Service in order to determine the location of substructures. The Contractor shall immediately notify the City of Sun Prairie and the utility owner if he/she disturbs, disconnects, or damages any utility.

In accordance with Wisconsin Labor regulations, the Contractor shall submit to the City of Sun Prairie specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to and accepted by the City of Sun Prairie prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such a plan varies from the shoring system standards established by the State of Wisconsin, a Wisconsin registered civil or structural engineer shall prepare the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the applicable construction codes in Wisconsin or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the existing law or regulations. In no event shall the Contractor use a shoring, sloping or protective system less effective than that required by the State. Submission of this plan in no way relieves the Contractor of the requirement to maintain safety in all areas. If excavation or trench work requiring a permit is to be undertaken, the Contractor shall submit his/her permit with the excavation/trench work safety plan to the City of Sun Prairie before work begins. The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.

CC. INSURANCE

INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, the Contractor shall, at its sole expense, maintain in effect at all times during the performance of the Work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

Worker's Compensation and Employers Liability Insurance – The Contractor shall cover or insure under the applicable Wisconsin labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. The Contractor/Consultant shall provide statutory covers for work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

Commercial General Liability and Automobile Liability Insurance – The Contractor/Consultant shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage – Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)

Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

Limits – The Contractor/Consultant shall maintain limits no less than the following:

General Liability – One million dollars (\$1,000,000) per occurrence (\$2,000,000 general aggregate if applicable) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504 endorsement provided to the City of Sun Prairie) or the general aggregate including product-completed operations aggregate limit shall be twice the required occurrence limit.

Automobile Liability – One million dollars (\$1,000,000) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.

Umbrella Liability – Five million dollars (\$5,000,000) for bodily injury, personal injury and property damage per occurrence in excess of coverage carried for Employers' Liability, Commercial General Liability and Automobile Liability as described above.

Required Provisions – The general liability and automotive liability policies are to contain or be endorsed to contain the following provisions:

The City of Sun Prairie, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033 for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises occupied or used by the Contractor; and vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sun Prairie, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the City of Sun Prairie, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City of Sun Prairie, its directors, officers, employees, or authorized representatives or volunteers shall not contribute to it. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sun Prairie, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after thirty ((30) days) (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the City of Sun Prairie.

Such liability insurance shall indemnify the City of Sun Prairie, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss

from liability imposed by law upon, or assumed under contract by, the Contractor for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability with a minimum of a 24-month policy extension, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the City of Sun Prairie, and shall have a minimum A.M. Best's rating of A-VII.

Deductibles and Self-Insured Retentions – Any deductible or self-insured retention must be declared to and approved by the City of Sun Prairie. At the option of the City of Sun Prairie, its elected and appointed officials, officers, employees, or authorized representatives or volunteers, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

Evidences of Insurance – Prior to execution of the agreement, the Contractor shall file with the City of Sun Prairie, a certificate of insurance (Acord Form 25-S) signed by the insurer's representative as well as endorsements evidencing the coverage required by this agreement. CG 20 10 11 85 covers all bases OR Form CG 20 10 07 04 for ongoing work exposure AND Form CG 20 37 07 04 for products-completed operations exposure. Contractor will also provide form CG 28 04 10 93, Earlier Notice of Cancellation with 30 days' notice.

Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions 1-8.

Responsibility for Work – Until the completion and final acceptance by the City of Sun Prairie of all the work under and implied by this agreement, the work shall be under the Contractor's responsibility care and control. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erectations, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

Sub-Contractors – In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

DD. 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 the 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 the 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.

EE. PUBLIC RECORD LAW COMPLIANCE

It is the intention of City to maintain an open and public process in the solicitation, submission, review, and approval of contacts.

The parties acknowledge that City is a municipal corporation legally bound to comply with the Wisconsin Public Records Law and Open Meetings Law (see sections 19.32-19.39 and 19.81-19.98, Wis. Statutes) and that, unless otherwise clearly allowed by law to be an exception to the Public Record Law and confidential, all aspects of this agreement are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws. To comply with any request under said Public Record Law, the provider/contractor herein shall produce copies of all materials, gathered or produced or modified pursuant to this Contract to City, in their original (i.e., electronic or digital, etc.) format at actual cost of reproduction, without profit. According to Wisconsin case law, even if records are created or maintained by, or in the custody of, the provider as an independent contractor, they, along with the raw data used to create the record, are nevertheless public records that must be made available to the public within a reasonable time and without delay upon request by any person, and in the format in which they were created. Provider/contractor agrees to hold City, its agents, officials and employees harmless and to indemnify them and City for all costs, fees, including all reasonable attorney fees and expenses of all kinds, and any judgments, orders, injunctions, writs of mandamus, and damages or expense of whatever kind for which City or its agents, officials or employees may expend or be held liable due to the Provider/contractor's failure to comply with the Wisconsin Public Records and Open Meetings laws, or with this Agreement.

Any Public Records Law request received directly by a contractor related to this Contract with City shall immediately be reported to the City Administrator.

FF. LIVING WAGE (Applicable to contracts exceeding \$5000)

Unless exempt, the Contractor agrees to pay all employees employed by the Contractor in the performance of this contract, whether on a full-time or part-time basis, a base wage of not less than minimum hourly wage.

GG. 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. The 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 employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

HH. IT NETWORK CONNECTION POLICY

If this Contract includes services such as software support, software maintenance, network services, system development services and/or will require a network connection to the City network, is hereby incorporated and made a part of this contract and Contractor agrees to comply with the City's computer use policy.

II. AUTHORITY

Contractor represents that it has the authority to enter into this contract. If the Contractor is not an individual, the person signing on behalf of the Contractor represents and warrants that she/he has been duly authorized to bind the Contractor and sign this contract on the Contractor's behalf.

JJ. COUNTERPARTS, CONTRACT DELIVERY

This contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Executed copies of the originally signed contract must be delivered or mailed to the City of Sun Prairie Clerk's Office. Copies of the contract exchanged by facsimile, electronic scanned copy or similar technology shall not be considered a valid signed contract.

II. SCOPE OF SERVICES

The work will include replacing 21 water source heat pumps with Carrier 50PCH or equivalent units with MERV 13 filtration and a minimum EER, COP as specified in the bid documents. Replacement units should utilize an electronically commutated motor (ECM) and be compatible with current and upcoming HVAC controls updates. Heat pump total capacity should be sized appropriately given the existing space conditions served. The selected contractor shall install heat pump units to maintain necessary clearance for changing filters and maintenance. Specifications and scope of work further detailed in bid documents, Engineering drawings and attachment 1. Funding for this project has been made available through American Rescue Plan Act (ARPA) resources, and bidders should be familiar with requirements associated, primarily any applicable prevailing wage, domestically sourced content, and the eligible use of funds to improve facility air quality by upgrading to MERV 13 filtration.

There are four alternate bid opportunities:

Alternate Bid #1: Pricing for premium efficiency units Carrier 50PSH or 50PTH or equivalent, minimum EER, COP as specified in the bid documents. Replacement units should utilize an electronically commutated motor (ECM). Provide estimates on incremental price increase compared to base bid efficiency, and estimated energy savings (both electricity and natural gas) annually.

Alternate Bid #2: Pricing for the installation of new supply air diffusers for heat pumps being replaced as part of this project, in addition to miscellaneous improvements such as supply air duct work cleaning.

Alternate Bid #3: Pricing for the installation of spray foam around the perimeter of the roof deck on the second floor of City Hall, to be done in coordination with installation work of heat pumps located in the drop sealing. Recent work in City Hall has uncovered the exposed condition of the roof deck and plenum which is resulting in air infiltration.

Alternate Bid #4: Pricing for removal and installation of Computer Room Air Conditioning unit in the second-floor server room. Replacement unit should utilize an ECM with compatibility to current and upcoming HVAC controls updates.

III. REQUIRED FORMS FROM CONTRACTOR

- Bid Form
- Sworn Statement
- 10% Bid Bond
- Performance Bond
- Payment Bond
- Certificate of Insurance
- Insurance Endorsements

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

CITY OF SUN PRAIRIE
A municipal government

CONTRACTOR

By: _____
Paul Esser, Mayor

Date: _____

By: _____
Elena Hilby, City Clerk

Date: _____

Approved as to Form:

By: _____
Kathleen McDaniel, City Attorney

Date: _____

By: _____
Kristin Vander Kooi, City Treasurer

Date: _____

(Name of Contracting Entity)

By: _____
(Signature)

(Print Name and Title of Person Signing)

Date: _____

By: _____
(Signature)

(Print Name and Title of Person Signing)

Date: _____