

**WINNEBAGO COUNTY
PURCHASE OF SERVICES AGREEMENT**

RE:

THIS AGREEMENT made and entered into this _____ day of _____, by and between Winnebago County, hereinafter referred to as "COUNTY" (whether a department, board, or agency thereof), and _____, hereinafter referred to as "CONTRACTOR."

WITNESSETH:

WHEREAS the COUNTY, whose address is 415 Jackson Street, Oshkosh, WI 54901, desires to purchase services from the CONTRACTOR for the purpose of _____; and

WHEREAS the CONTRACTOR whose address is _____, is able and willing to provide such services;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, the receipt and sufficiency of which is acknowledged by each party for itself, the COUNTY and the CONTRACTOR do agree as follows:

1. **TERM:** The term of this Agreement shall commence as of the _____ day of _____, and shall terminate as of the _____ day of _____, unless sooner agreed upon by the parties. In any event, the CONTRACTOR shall complete its obligations under this Agreement not later than the _____ day of _____, and upon its failure to do so, the COUNTY may invoke the penalties set forth in the bid specifications, RFP, or Schedule A. The COUNTY shall not be liable for any services performed by CONTRACTOR other than during the term of this Agreement.

2. **SERVICE TO BE PROVIDED:** CONTRACTOR agrees to provide the services detailed in the bid specifications, if any; the request for proposals (RFP) and the CONTRACTOR's response thereto, if any; and on the attached Schedule A, incorporated herein by reference. In the event of a conflict between or among the bid specifications, the RFP of responses, proposals, and/or the terms of Schedule A, it is agreed that the terms of Schedule A, to the extent of any conflict, will be controlling.

3. **ASSIGNMENT**: CONTRACTOR shall not assign any interest or obligation in this Agreement and shall not transfer any interest or obligation in this Agreement, whether by assignment or novation, without the prior written consent of the COUNTY unless permitted otherwise by the bid specifications.
4. **TERMINATION**: If, through any cause, the CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this Agreement or, if, the CONTRACTOR shall violate any of the covenants or stipulations of this Agreement, the COUNTY shall thereupon have the right to terminate this Agreement by giving a thirty (30) day written notice to the CONTRACTOR of such termination, and shall specify the effective date thereof. There shall be no other termination or cancelation of this Agreement during its term, without the prior written consent of both parties unless specifically permitted otherwise by the bid specifications, RFP, or Schedule A.
5. **UNFINISHED WORK**: In the event the COUNTY exercises its unilateral right to terminate this Agreement for cause in the manner provided for in Paragraph 4, above, all finished or unfinished documents, services, papers, data, products, or the like prepared, produced, or made by the CONTRACTOR under this Agreement shall, at the option of the COUNTY, become the property of the COUNTY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents, services, papers, data, products, or the like. Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by the CONTRACTOR, and the COUNTY may withhold any payments to the CONTRACTOR for the purpose of set-off.
6. **FAILURE TO APPROPRIATE FUNDS**: The failure of the Winnebago County Board of Supervisors to appropriate sufficient funds in any year covered by this Agreement shall automatically terminate this Agreement.
7. **TERMS OF PAYMENT**: The COUNTY will pay the CONTRACTOR for all the aforementioned work the sum of _____ (\$_____) upon satisfactory completion of the work and performance of this contract. All goods and services delivered prior to December 31st must be invoiced to COUNTY by January 31st of the subsequent year or the invoice will be subject to a 10% deduction for late billing.

8. **WISCONSIN LAW CONTROLLING:** It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling.
9. **ARBITRATION:**
- A. This Agreement shall be covered by the laws of the State of Wisconsin.
 - B. Claims, disputes, and other matters in question between the parties to this Agreement arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining, upon the express written consent of all parties of this Agreement. In the event the parties proceed to arbitration, the proceedings shall be governed by the following:
 - 1) The American Arbitration Association shall submit a panel of five (5) arbitrators to the parties. The parties shall alternate strikes until one arbitrator remains who shall arbitrate the dispute. The party initiating the first strike shall be determined by the winner of a coin flip.
 - 2) The costs of the arbitration proceeding (except for the filing fee, which shall be paid by the party initiating the proceeding) shall be borne equally by the parties. Each party shall pay his own legal fees and expenses incurred in connection with the proceeding.
 - 3) Any arbitration shall take place in the city of Oshkosh, Winnebago County, Wisconsin.
 - 4) Unless otherwise agreed upon by the parties, the arbitration hearing shall be limited to one day in length with the arbitrator providing each side equal time to present its case during that day.
 - 5) Any discovery proceeding shall be limited to the thirty (30) day period prior to the date of the arbitration hearing. The party requesting the discovery shall pay for all costs incurred by the opposite party, except for attorney's fees, relating to the discovery procedure including, but not limited to, witness, reporter's fees for depositions, photocopying fees, postage fees, and delivery fees.
 - 6) In issuing any ruling regarding any arbitration matter, the arbitrator shall issue a written decision which shall include written findings of fact and conclusions of law.
 - 7) The proceeding and arbitration shall be governed by the law of the State of Wisconsin including, specifically, Chapter 788, Wis Stats.

10. **CONTRACTOR EFFICIENCY**: CONTRACTOR shall commence, carry on, and complete its obligations under this Agreement with all deliberate speed and in a sound, economical, and efficient manner, in accordance with this Agreement and all applicable laws. In providing services under this Agreement, the CONTRACTOR agrees to cooperate with the various departments, agencies, employees, and officers of the COUNTY.
11. **CONTRACTOR**: CONTRACTOR shall not subcontract any work pursuant to this Agreement without the prior written consent of COUNTY. CONTRACTOR shall maintain a written list of all subcontractors and suppliers performing labor or supplying materials under this Agreement and shall make the list available to COUNTY upon request. COUNTY, at its option, may make direct payments to subcontractors for various services performed pursuant to this Agreement or, alternatively, may issue a two-party check to CONTRACTOR and his subcontractors.
12. **CONTRACTOR**: CONTRACTOR shall comply with any bonding requirements, which may be applicable pursuant to § 779.14(1m), Wis Stats.
13. **CONTRACTOR**: CONTRACTOR shall pay all legitimate claims for labor performed and materials furnished, used or consumed in making any public improvements or performing any public work pursuant to this Agreement. Failure to comply with this provision, if applicable, may subject CONTRACTOR to criminal penalties pursuant to §§ 779.16 and 943.20, Wis Stats.
14. **CONTRACTOR EMPLOYEES**: CONTRACTOR agrees to secure at CONTRACTOR's own expense all personnel necessary to carry out CONTRACTOR's obligations under this Agreement. Such personnel shall not be deemed to be employees of the COUNTY nor have any direct contractual relationship with the COUNTY.
15. **DELIVERY BY MAIL**: Notices, bills, invoices, and reports required by this Agreement shall be deemed delivered as of the date of postmark if deposited in a United States mailbox, first class postage attached, addressed to a party's address as set. It shall be the duty of a party changing its address to notify the other party in writing within a reasonable time.

16. **HOLD HARMLESS**: At all times during the term of this Agreement, CONTRACTOR agrees to indemnify, save harmless, and defend the COUNTY, its boards, commissions, agencies, officers, employees, and representatives against any and all liability, losses, damages, costs, or expenses, whether personal injury or property damage, that the COUNTY, its officers, employees, agencies, boards, commissions, and representatives may sustain, incur, or be required to pay by reason of the CONTRACTOR furnishing the services or goods required to be provided under this Agreement, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs, or expenses caused by or resulting from the acts or omissions of the COUNTY, its agencies, boards, commissions, officers, employees, or representatives.
17. **INSURANCE**:
- A. Prior to commencing work, CONTRACTOR shall, at its own cost and expense, furnish COUNTY with a Certificate of Insurance indicating proof of the following insurance from companies licensed in the State of Wisconsin:
- 1) **Workers' Compensation**: (Statutory) In compliance with the Compensation law of the State of Wisconsin and Employers' Liability Insurance with a limit not less than \$100,000 each accident.
 - 2) **Comprehensive or Commercial General Liability Insurance** with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate combined Single Limit for bodily injury and property damage. This insurance shall include, but not be limited to, the following coverages:
 - a) Premises—Operations
 - b) Products and Completed Operations
 - c) Broad Form Property Damage
 - d) Contractual
 - e) Personal InjuryIf excavating, underground, or collapse is involved, the limits of liability stated above shall be changed to \$2,000,000. If Asbestos is involved, the limits of liability stated above shall be changed to \$5,000,000.
 - 3) **Automobile Liability**: Insurance with a minimum limit of \$1,000,000 per occurrence/\$1,000,000 aggregate Combined Single Limit for bodily injury and property damage, and shall include coverage for all of the following:
 - a) Owned Automobiles
 - b) Hired Automobiles
 - c) Non-Owned Automobiles

- B. The certificate shall list the **Certificate Holder and Address** as follows:

WINNEBAGO COUNTY
ATTENTION INSURANCE ADMINISTRATOR
PO BOX 2808
OSHKOSH WI 54903-2808

The Winnebago County Department(s) involved shall be listed under “**Description of Operations.**”

- C. Such insurance shall include under the **General Liability and Automobile Liability Policies** Winnebago County, its employees, elected officials, representatives, and members of its boards and/or commissions as “**Additional Insureds.**”
- D. CONTRACTOR shall require subcontractors, if applicable, to furnish identical Certificates of Insurance to the Winnebago County Insurance Administrator prior to the contract taking effect.
- E. Such Certificates of Insurance shall include a thirty (30) day notice prior to cancelation or material policy change, which notice shall be given to:

WINNEBAGO COUNTY
ATTENTION INSURANCE ADMINISTRATOR
PO BOX 2808
OSHKOSH WI 54903-2808

All such notices will name the CONTRACTOR and identify the project.

The Winnebago County Insurance Administrator must approve any exception to these requirements. Submit any requests in writing to:

WINNEBAGO COUNTY
ATTENTION INSURANCE ADMINISTRATOR
PO BOX 2808
OSHKOSH WI 54903-2808

or email to: dpetraszak@co.winnebago.wi.us.

18. **LIMITATION EFFECT ON PAYMENTS BY COUNTY:** In no event shall the making of any payment required by this Agreement constitute or be construed as a waiver by the COUNTY of any breach of the covenants of this Agreement or a waiver of any default of the CONTRACTOR, and the making of any such payment by the COUNTY while any such default or breach shall exist in no way shall impair or prejudice the right of the COUNTY with respect to recovery of damages or other remedies as a result of such breach or default.

19. **DISCRIMINATION**: During the term of this Agreement, the CONTRACTOR agrees not to discriminate against any person, whether a recipient of services (actual or potential), an employee, or an applicant for employment on the basis of race, religion, sex, handicap, national origin, age, cultural differences, sexual preference, marital status, or physical appearance. Such equal opportunity shall include but not be limited to the following: employments, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, or any other form of compensation. The CONTRACTOR agrees to post in conspicuous places, available to all employees and applicants for employment, notices setting forth the provisions of this Agreement as they relate to affirmative action and nondiscrimination.
20. **AFFIRMATIVE ACTION**: CONTRACTOR may be required to file an Affirmative Action Plan with the COUNTY if the CONTRACTOR receives \$10,000 in annual aggregate contracts or other such consideration of comparable worth, and CONTRACTOR has ten (10) or more employees. Such plan must be filed within fifteen (15) days of the effective date of this Agreement, and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by the COUNTY.
21. **EQUAL OPPORTUNITY EMPLOYER**: CONTRACTOR shall, in all solicitations for employment placed on CONTRACTOR's behalf, state that CONTRACTOR is an "Equal Opportunity Employer."
22. **COMPLIANCE INFORMATION**: CONTRACTOR agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and nondiscrimination, which may include any books, records, or accounts deemed appropriate to determine such compliance.
23. **CONTRACTOR'S LEGAL STATUS**: CONTRACTOR warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so and, if a corporation, that the name and address of CONTRACTOR's registered agent is as set forth opposite the heading REGISTERED AGENT on the last page of this Agreement. CONTRACTOR shall notify COUNTY immediately, in writing, of any change in its registered agent, his or her address, and the CONTRACTOR's legal status.

24. **ENTIRE AGREEMENT**: The entire Agreement of the parties is contained herein, and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.
25. **COMPLIANCE WITH WISCONSIN PUBLIC RECORDS LAW**: Contractor understands that Winnebago County is bound by the Wisconsin Public Records Law, Wis. Stat. sec. 19.21, et. seq. Pursuant to Wis. Stat. sec. 19.36 (3), County may be obligated to produce to a third party the records of a Contractor that are “produced or collected” by the Contractor under this Agreement (“Records”). Contractor is further directed to Wis. Stat. sec. 19.21, et. seq. for the statutory definition of Records subject to disclosure under this paragraph, and Contractor acknowledges that it has read and understands that definition. Notwithstanding any other term of this Agreement, Contractor is (1) obligated to retain Records for seven (7) years from the date of the Record’s creation; and (2) produce such Records to County if, in County’s determination, County is required to produce the records to a third party in response to a public records request. Contractor’s failure to retain and produce Records as required by this paragraph shall constitute a material breach of this Agreement, and Contractor must defend and hold County harmless from liability due such breach.

IN WITNESS WHEREOF, the COUNTY and the CONTRACTOR have executed this Agreement and its Schedules as of the day and date first set forth above.

FOR THE CONTRACTOR:

FOR WINNEBAGO COUNTY:

Mark L Harris
Winnebago County Executive

Susan T Ertmer
Winnebago County Clerk

REGISTERED AGENT:

Name

Address

City/State/Zip

**Drafted by:
Mary Anne Mueller
Corporation Counsel for
Winnebago County**

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Revised: 6/2018