

REQUEST FOR PROPOSAL NO. – 240321

Sealed Request for Proposal will be received in the office of the City Purchasing Manager, 12th Floor, City Hall, 455 North Main, Wichita, Kansas, prior to **10:00 O'CLOCK A.M., FRIDAY, April 18, 2025**. **One (1) electronic copy of the proposal is required. Proposals are to be submitted electronically through the City's Procurement Portal (wichita.gov/procurementportal) using secure login/password for:**

VARIOUS DEPARTMENTS, BOARDS, & AGENCIES

Office Supplies; Furniture; Maintenance, Repair & Operations Items Electronic Catalog Solution

AS PER SPECIFICATIONS

F.O.B.: Wichita, KS

Specifications for the sealed proposals are on file in the office of the City Purchasing Manager, 12th Floor, City Hall, 455 North Main, Wichita, Kansas, (316) 268-4636. This information is also available on the City of Wichita Web Site at wichita.gov/procurementportal.

Sealed proposals shall be received (electronically as stated) in the office of the City Purchasing Manager prior to 10:00 o'clock a.m., Friday, April 18, 2025.

The review and evaluation of the submitted Proposals will take estimated 60 to 90 days before notification from the City of Wichita that a contract has been approved by City Council. If the Purchasing Division may be of further assistance, please contact us at (316) 268-4636.

PERFORMANCE BOND, in the amount of one hundred percent (100%) of the contract, must be furnished by the successful vendor prior to any contract award.

Performance Bond shall be written by a Bonding Company approved by the United States Treasury Department and licensed to do business in the State of Kansas. The successful vendor agrees to enter into a contract with the City, and when required, as per specifications, to furnish bond by a surety company authorized to do business in the State of Kansas."

Dated at Wichita, Kansas, on the 13th day of February, 2025.

Josh L. Lauber, MBA, CPSM
Purchasing Manager



CITY OF WICHITA
 FINANCE DEPARTMENT/PURCHASING DIVISION
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REQUEST FOR PROPOSAL #240321

Office Supplies; Furniture; Maintenance, Repair & Operations Items Electronic Catalog Solution
 City of Wichita – Various Departments, Boards, & Agencies

February 13, 2025

PROJECT DEFINITION

The City of Wichita is seeking proposals from firm(s) to provide **Office Supplies; Furniture; Maintenance, Repair & Operations Items Electronic Catalog Solution** for **Various Departments, Boards, & Agencies**. One of the goals of obtaining one or more vendor contracts for the City’s **Office Supplies; Furniture; Maintenance, Repair & Operations Items Electronic Catalog Solution** is to ensure efficient and effective purchases for department customers at the lowest cost in conjunction with automated billing and supply usage tracking reports.

Proposers may state if a “purchasing cooperative” is quoted from as a basis of cost estimation and response submission for City consideration if core list offerings and the scope of services requested can be fulfilled by a proposer’s existing cooperative contract offerings.

The selection of the consulting firm by the City’s Staff Screening and Selection Committee will be based on several factors, including: (1) ability to meet proposal terms and conditions, (2) project understanding/presentation, (3) technical qualifications/resources, (4) technology & City enterprise resource planning (ERP) system integration capabilities, (5) references/past performance, (6) cost, and (7) E/DBE Participation.

If you have questions, please email them to Josh Lauber (jlauber@wichita.gov) no later than 5:00 p.m., Friday, March 28, 2025. Questions must be submitted via email, and they will be answered through an addendum made available to all interested parties.

Tentative Schedule	
RFP Released	February 13, 2025
Questions Due Via Email	March 28, 2025, 5:00 p.m.
Questions Answered Via Addendum	April 4, 2025
Proposals Due	April 18, 2025, 10:00 a.m.
Evaluation	April 2025 – October 2025
Project Awarded (tentative)	October 2025

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I. OVERVIEW AND SUMMARY

The City of Wichita is the largest city in Kansas with a population of approximately 397,000 and is the seat of Sedgwick County. As of May 2024, the city’s total land area was approximately 167 square miles. Major highways, including the Kansas Turnpike (I-35), Interstate 135 and U.S. 54 (Kellogg Avenue) link the City with a large trade area that encompasses a population of more than 1.1 million people within a 100-mile radius. The City of Wichita employs approximately 3,100 employees providing a full range of municipal services, including police and fire protection, parks and recreation programs, libraries, public housing, municipal transportation, airports, water and sewer utilities, general administration, and other services. Information regarding the City of Wichita can be found at <https://www.wichita.gov>. The legislative body of the City consists of a six-member City Council, elected by district, and a full time Mayor elected from the City-at-large. The Council members and the Mayor serve four-year terms overlapping. The Council and Mayor establish general policies, which are executed by the City Manager.

The City of Wichita is seeking proposals from firm(s) to provide **Office Supplies; Furniture; Maintenance, Repair & Operations Items Electronic Catalog Solution for Various Departments, Boards, & Agencies**. One of the goals of obtaining one or more contracts for the City’s purchase of Office Supplies, Furniture, Maintenance, Repair, & Operations Items (Items) is to ensure efficient and effective procurement for department customers at the lowest cost in conjunction with automated billing and supply usage tracking reports. Hereafter, firm will also imply references of “vendor, provider, offeror, contractor, and proposer” for purposes of definition.

The awarded proposer is intended to facilitate the City’s procurement of items purchases through a provided process utilizing proposer technology, product selection & availability, and logistical supply chains yielding non-labor intensive requirements of City staff for their respective department’s ongoing usage. Office Supply purchases alone are anticipated to be an estimated three hundred thousand dollars (\$300,000) annually, yielding a \$3 million 10-year contract award of all exercised contract term options. This usage is anticipated to grow if systems, processes, and efficiencies are established through completion of this procurement process yielding a contracted provider(s).

The following volumes are provided:

- ~3,100 employees
- ~450 employees completing department financial transactions, including contract drafting requests
- \$445,588,352 actual purchases made, reviewed, or approved by the central purchasing office in 2023
- \$13,098,217 P-Card purchases completed in 2024
- 31,342 P-Card transactions administered in 2024

Upon establishment of electronic catalog solutions, P-Card transactions associated with the following Merchant Category Codes (MCC) will be strongly encouraged to utilize contracted vendors unless instances of pricing and/or availability prohibit usage in the course of City Department Operations. The following P-Card transactions volumes are provided for the time period of October 2022 – December 2024:

- 1500-2999 (Contracted Services): \$718,711.67
- 5000-5599 (Retail Outlet Services): \$11,181,559.43
 - 5200 (Home Supply Warehouse Stores...) \$424,243.85
 - 5211 (Lumber and Building Material Stores) \$137,502.61
 - 5231 (Glass, Paint or Wallpaper Stores) \$42,835.77
 - 5251 (Hardware Stores and Similar Services) \$347,742.43

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○ 5251 (Garden and Lawn Supply Stores...)	\$30,344.70
○ 5300 (Wholesale Clubs)	\$148,926.45
○ 5310 (Discount Stores)	\$35,136.52
○ 5399 (General Merchandise or Convenience...)	\$151,898.40
○ 5511 (Auto/Truck Dealers New/Used Sale Repair...)	\$1,078,666.34
○ 5532 (Automotive Tire Stores)	\$775,744.67
○ 5533 (Automotive Parts, Accessories Stores)	\$916,396.45
○ 5599 (Automotive Dealers)	\$417,516.21
● 5700-7299 (Miscellaneous Stores):	\$2,882,878.54
○ 5722 (Appliance Stores)	\$90,963.40
○ 5732 (Electronic Sales)	\$94,500.72
○ 5732 (Computer Software Stores)	\$82,427.67
○ 5815 (Digital Goods Media: Books...)	\$721,518.84
○ 5941 (Sporting Goods Stores)	\$88,203.19
○ 5942 (Book Stores)	\$459,819.57
○ 5943 (Stationary Stores)	\$339,729.03
○ 5964 (Catalog Merchant)	\$152,474.99
○ 5964 (Miscellaneous & Specialty Stores)	\$285,440.93
○ 7299 (Misc Personal Services Not Elsewhere...)	\$90,682.06
● 7300-7999 (Business Services):	\$2,702,646.86
○ 7338 (Print Shops, Quick Copy Services...)	\$48,490.74
○ 7349 (Cleaning and Maintenance, Janitorial...)	\$203,775.75
○ 7394 (Equip, Tool, Furniture, Appliance...)	\$268,918.19
○ 7399 (Business Services (NEC))	\$434,211.74
○ 7531 (Automotive Body Repair Shops)	\$175,703.04
○ 7538 (Automotive Service Shops (Non-Dealer)	\$563,934.15
○ 780 (Horticultural Services, Landscaping...)	\$88,194.03

II. **PROJECT OBJECTIVES**

The purpose of the proposal is to demonstrate the qualifications, competence and capacity of firms seeking to provide services specified herein for the City of Wichita, in conformity with the requirements of this Request for Proposal. The proposal should demonstrate the qualifications of the firm and the staff to undertake this project. It should also specify the proposed approach that best meets the Request for Proposal requirements. The proposer must address each of the service specifications under the Scope of Services.

City Enterprise Resource Planning (ERP) System integration with an Items Catalog Solution provider is paramount for any award consideration. City goals are anticipated to be the creation of exclusive vendor "punch-out" relationships for City Department staff usage if a single provider cannot be identified to achieve the scope of services requested at optimal pricing.

III. **SCOPE OF SERVICES**

Office Supplies; Furniture; Maintenance, Repair & Operations Items (herein referred to as "items") & Electronic Catalog Solution will support the City's procurement and purchasing of a broad range of items needs that facilitate the operation of the City's Departments. If a provider can facilitate an Electronic Catalog Solution of one (1) or limited categories of goods and services outlined below, they are encouraged consideration if they

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successfully facilitate all other scope of services requested by the City and strategically align to the City's goal of efficient and effective procurement by City Departments throughout course of awarded contract usage. **The following listing is not intended to be "all-inclusive" and may allow for additional consideration and usage of items upon approval by the City's Purchasing Manager throughout duration of the contract's usage:**

- Stationary Supplies & Consumables
 - Paper (printing & writing)
 - Note Pads, Index Cards, Labels, File Folders, etc.
 - Staplers, Scissors, Tape, Pushpins, Rubber Bands, etc.
 - Writing Materials & Devices
- Record-Keeping Supplies
- Maintenance, Repair, & Operations Supplies
 - Facilities Tools, Equipment, and Hardware
 - Cleaning Products
- Furniture
 - Chairs & Seating, Tables, Storage Solutions, Conference Tables & Chairs, Desks (including standing), Activity-Based Workstations, Modular Office items & accessories
 - Furniture usage by employees requiring safety and ergonomic considerations:
 - Warranty & Support
 - Furniture usage by employees *not* requiring safety and ergonomic considerations:
 - Items that do not interfere with the City's identified centralized procurement strategies & management
- Break Room Supplies
- Technology Hardware & Equipment
 - Multi-Function Devices (Copiers) are *not* intended nor included in this contract
 - Computers, Laptops, & Related Peripherals are not intended to directly contradict the City's identified Dell Direct IT procurement strategy & management unless approved by the City CIO (or their represented designee).
 - Items that do not interfere with the City's centralized IT procurement strategies & management
- Software
 - In rare instances, software of de minimis value may be purchased that is *not* unrelated to enterprise applications (Microsoft Office/O365, Adobe, etc.) currently purchased. Any instances of software purchases completed through this contract will be approved by the City CIO (or their represented designee).
 - Items that do not interfere with the City's centralized IT procurement strategies & management
- All other Goods & Services (Items) deemed low-cost, high-volume spends that do not facilitate, support, or allow for contracting in the cost-benefit analysis of procurement decisions & strategies.

The following outlines expectations and intent for any City award consideration for Office Supplies; Furniture; Maintenance, Repair & Operations Items (Items) Electronic Catalog Solution:

- A. The Catalog Solution will accept order submissions via provider punch-out/website integration with the City's ERP system. Technical Information including software application and version may be requested of the City CIO directly at Mike Mayta, mmayta@wichita.gov. Catalog Solution will allow for the listing of any additional secondary and alternative item brand/model options to facilitate City Department

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“marketplace shopping” increasing item competition. The Catalog Solution must have the ability to provide an online catalog, which would allow City staff to enter their own orders online via the designated Catalog Solution website. The proposer should provide information on how to submit orders and the capabilities of their online ordering website.

- B. Catalog Solution provider must allow for, provide ongoing technical support of, and pay all (and any) related expenses for Catalog Solution integration (“punch out”) with City of Wichita’s ERP System.
- C. All transactions completed by City Departments located inside City Hall must be delivered FOB Destination directly to the actual Department location within City Hall’s fourteen floors and packaged according to the City ERP Financial System’s budgetary accounting information (Identified in Enterprise ERP as “ORG/Object Code”) designation.

For orders placed by City Department/Divisions outside City Hall, the awarded contractor shall deliver items FOB Destination to the address of the City Department/Division, which ordered the items.

Attachment F – City Facility Address Locations provides shipping addresses of Departments and Divisions located within City Hall and outside of City Hall.

- D. Items Catalog Solution will allow administration by the Purchasing Division to restrict transactions by item, category, and unique product identifier to prevent purchases contracted. For example, Computers and Laptops may be restricted by Purchasing Division staff to allow City Departments to view item information, pricing, and relevant information but must be “unrestricted” by Purchasing Division staff prior to any purchase & transaction may be completed by a City Department.
- E. Any order received by the awarded contractor should provide a performance expectation of order delivery for City consideration as a part of proposal submission to be incorporated for an awarded contract’s performance obligations. This timeframe should reflect a designated time when to expect order fulfillment and delivery completion. For example, if orders are received by 3:00 p.m., order fulfillment and delivery shall be completed in no more than two (2) working days. Special order items from an awarded contractor’s supply catalog should outline expectations for order fulfillment and delivery for items that are & are not contained within **Attachment E – Core List Offering & Pricing Sheet**. These items are provided as examples and expected quantities from the City’s most commonly purchased items during the past three (3) years.
- F. The awarded contractor shall make available a customer service representative to serve as a City-designated “point contact” regarding the City’s account. This assigned contact would be expected to meet with the Purchasing Division on an annual or semi-annual basis for an account review of City purchasing activity, product category spending & data analytics, and to receive City department customer-identified concerns regarding orders, delivery, status, and overall account management to support the Purchasing Division’s efficient and effective contract management.
- G. The awarded contractor must indicate the company’s Return & Refund policy. Instances of “potential scenarios,” a return & refund would occur, and their relevant application should summarize the policy and procedure as a part of response submission.

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- H. Catalog Solution must be able to provide a computer generated “Summary Monthly Statement” sorted by City Department Requisitioner and/or ERP System ORG/Object code (six-digit accounting code). Summary Monthly Statement will include a department and/or division name, department requisitioner name, or an authorized personnel code for each department supported by invoices that will include the item number (or SKU), item description, quantity purchased, unit price, and extended price. For each ORG/Object code, the monthly statement shall display each item purchased and subtotal for the month and with a year-to-date total. The statement will be transmitted via email in a PDF document form. The City of Wichita will pay the Items Catalog Supply Firm by credit card once a month from these monthly statements or also has the option of ACH payments.
- I. Proposer of Items & Catalog Solution should indicate its ability to submit a data file in a format which will allow direct interface to the City’s ERP System as apart of monthly payment reconciliation. The file layout requirement is attached within the document titled, **Attachment C – File Layout Requirements**. The file will contain one record for each ORG/Object code charged and will contain a summary record similar to the “charge” record containing the dollar total of the charge records, as well as various codes needed to record the revenue portion of the transaction.
- J. **Attachment D – City of Wichita Actual Usage Report** outlines historical spending activity during the time period of January 1, 2021, to December 2024.
- K. Items & Catalog Solution provider must supply a catalog (whether printed and/or online), which will be distributed to City departments/divisions. Please specify when any wholesaler catalog(s) will be provided. Please outline extent of company’s on-line catalog offerings. If your company does have an online Catalog Solution proposer will be responsible for training on the software.
- L. Items & Catalog Solution provider should identify if there is a Wichita location and address for authorized City of Wichita personnel to pick up supplies in lieu of delivery.
- M. Rebates and Contract Usage resulting in City payments from a vendor catalog usage should be outlined to itemize terms and conditions of contract rebates for the City.

IV. **PROPOSAL TERMS**

A. Questions and Contact Information:

Any questions regarding this document must be submitted via email to Josh Lauber, jlauber@wichita.gov in accordance with the dates and times stipulated for questions. Any questions of a substantive nature will be addressed in written form as a posted addendum on the City’s Procurement Portal (wichita.gov/procurementportal) within the “Open Public Opportunities” tab under the associated solicitation number’s “Supporting Documentation.” Respondents are responsible for checking the City’s Procurement Portal and acknowledging any addenda electronically as a part of the Procurement Portal submission’s electronic acknowledgment for all stipulated response forms and addendum acknowledgments.

To ensure interested parties receive notification of any published addendum by the City, respondents need to verify the selection of “Real Time” on their Procurement Portal - *Notification Center* settings:

- Accept *Invites from Agencies* (to receive invitations for new solicitation opportunities)
- Accept *Messages* (to receive notifications for any published addendum)

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Failure to select “Real Time” notification settings will impact your Procurement Portal profile’s ability to receive notifications and messages by the City of Wichita Purchasing Division.

To view your Procurement Portal’s Notification Center settings, log into your account and select Settings, Global Vendor Record, Manage my Organization, and Notifications to view this settings screen. If further assistance is needed, please contact the Purchasing Office directly at purchasing@wichita.gov or by phone at 316-268-4636.

B. Proposal Submission:

Proposals will be received (electronically as stated) in the office of the City Purchasing Manager, 12th Floor, City Hall, 455 North Main, Wichita, Kansas 67202, prior to 10:00 O’CLOCK A.M., Friday, April 18, 2025. Proposals are to be submitted electronically through the City’s Procurement Portal (wichita.gov/procurementportal) using a secure login/password.

If a Bonfire registration for system access has not been completed, please visit wichita.gov/purchasing for assistance. On the Purchasing website page, a video tutorial (Bonfire Registration Video) walkthrough and registration resources are available to help in the completion of the registration process. If further assistance is needed, please contact the Purchasing Office directly at purchasing@wichita.gov or by phone at 316-268-4636.

All cost incurred in the preparation and presentation of a proposal shall be wholly absorbed by the respondent.

All proposals, including supporting documentation/manuals, shall become the property of the City.

C. Evaluation Criteria:

A Screening and Selection Committee composed of City staff from various departments, and in requested instances, community members will evaluate received proposals. At the discretion of the Selection Committee, respondents may be asked to make an oral presentation to clarify information in their submittal. The Selection Committee will make recommendations regarding the selection to the City Council and request authorization to enter into a contract with the approved firm.

The Staff Screening and Selection Committee will evaluate proposals submitted. Proposal responses will be evaluated on the following but not limited criteria:

Ability to Meet Proposal Terms and Conditions (10%)

- Proposal contains all required elements
- No conflict of interest with the City, current City Council members or staff
- Verifiable record of professionalism and quality

Project Understanding/Presentation (20%)

- Understanding of project objectives
- Qualifications/knowledge/experience with similar projects
- Approach to project
- Knowledge of local situation
- Proposed work schedule
- Preparation/presentation/format of proposal

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Technical Qualifications/Resources (20%)

- Financial strength of the firm
- Management capabilities
- Experience of assigned personnel
- Staff/time availability to handle project within desired period

City Technology & Enterprise Resource Planning (ERP) System Integration Capabilities (30%)

- ERP System Interface & Compatibility Warranties
 - Proposer hereby expressly warrants the catalog solution deliverables as being correct and compliant with the terms of this RFP and any published addendum, as written. Proposer's response submission encompasses the correction of defective deliverables and revision of the same, as necessary, including deficiencies found during the implementation or post-implementation phase.
 - Proposer warrants that any catalog solution, including any licensed application, delivered under any awarded agreement shall comply with the terms of this RFP. Proposer warrants that the software solution or other products, including any licensed application, provided under any awarded agreement will meet the applicable specifications for two (2) years after acceptance by the City CIO and implementation by the City. If the catalog solution or other products, including any licensed application, fail to meet the applicable specifications during the warranty period, the awarded proposer will correct the deficiencies at no additional cost to the City so that the Software or other products, including any licensed application, meets the applicable specifications. The failure of proposer to warrant either catalog solution deliverables or software is grounds for agreement termination.
- Monthly Reconciliation, Billing, and Payment Processes & Abilities
- City Cost Center Assignment, Tracking, and Electronic Processing
- Data Analytics & Reporting

References/Past Performance (5%)

Cost (10%)

E/DBE Participation (5%)

The Staff Screening and Selection Committee at their discretion may or may not conduct interviews. If interviews are conducted, the Committee may interview part or all of the respondents. The City reserves the right to make an award based on the greatest benefit to the City and not necessarily on the lowest fee proposal. **Failure of proposer ability to integrate with City Enterprise Resource Planning (ERP) System for creation of Items Catalog Solution will be grounds for rejection of a proposal response.**

Following selection by the Staff Screening and Selection Committee, the highest ranked firm(s) will be recommended. The City Council reviews and approves or disapproves the selection and authorizes the necessary signatures.

The City reserves the right to accept or reject any or all proposals and reserves the right to modify the scope of services during negotiation of the contract. Submission of a proposal indicates acceptance of the

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conditions contained in the Request for Proposal (RFP) and an agreement to negotiate a contract for services. The City reserves the right to make an award on the basis of greatest benefit to the City and is not obligated to select the lowest cost option.

The City, through its Purchasing Manager, reserves the right to accept or reject any or all proposals and any part or parts of any proposal, and to waive formalities therein to determine which is the most beneficial proposal.

D. Tentative Schedule:

The tentative schedule will apply to this Request for Proposal (RFP) and may change according to with the City's needs or unforeseen circumstances. All dates and times will be in Central Standard Time (CST; CDT) and can be confirmed through the Purchasing Office located at 455 N. Main 12th Floor Wichita, KS 67202, calling (316) 268-4636, or by contacting the buyer listed on the solicitation document. Questions of a substantive nature will be reviewed and answered in written form as an addendum and posted to the City's Procurement Portal at wichita.gov/procurementportal.

Vendors are encouraged to complete vendor registration by visiting the City of Wichita's Procurement Portal found at wichita.gov/procurementportal, then follow the link to the Bonfire vendor registration page to register your company. Please check our website, wichita.gov/purchasing for upcoming registration opportunities, training dates & locations, and information as it is updated in the near future.

The review and evaluation of the submitted proposals historically takes an estimated 60 to 90 days before notification from the City of Wichita that a contract has been approved by City Council.

Event	Date
Solicitation Advertised	February 14, 2025
Last Day for Written Question	March 28, 2025, @ 5:00 p.m.
Addendum Posting	April 4, 2025
Proposal Due	April 18, 2025, @ 10:00 a.m.
Evaluation/Optional Oral Presentations	April 2025 – October 2025
City Council Approval (tentative)	October 2025

E. Minimum Respondent Qualifications:

This section lists the criteria to be considered in evaluating the ability of firms interested in providing the goods and/or service(s) specified in this Request for Proposal. Firms should meet or exceed these qualifications to be considered for award. Any exceptions to the requirements listed should be clearly detailed in the proposer's response. Proposers shall:

1. Have a minimum of 5 years' experience in providing similar services specified in this RFP.
2. Understanding of industry standards and best practices.
3. Have experience in providing goods and/or services of comparable size and complexity to that being requested.
4. Have knowledge of and comply with all currently applicable, and as they become enacted during the contract term, federal, state and local laws, statutes, ordinances, rules and regulations. All laws of the State of Kansas, whether substantive or procedural, shall apply to the contract, and all statutory, charter, and ordinance provisions that are applicable to public contracts in the city shall be followed with respect to the contract.
5. Registration with the Kanas Secretary of State's Office before contract execution.

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6. Having Municipal government experience is preferable; however, the City will make the final determination based on responses received and the evaluation process.
7. Have the capacity to acquire all bonds, escrows or insurances as outlined in the terms of this RFP.
8. Provide project supervision (as required) and quality control procedures.
9. Have appropriate material, equipment and labor to perform specified services.
10. Ensure parking occurs only in designated areas and parking permits are displayed (if provided).
11. Wear company uniform or ID badge for identification purposes.
12. Meet local, state, and federal guidelines as applicable.
13. City ERP System Integration Capability: Must allow for, provide ongoing technical support of, and pay all (and any) related expenses for Catalog Solution integration (“punch out”) with City of Wichita’s ERP System is Enterprise ERP (commonly previously known as “Munis ERP”), a Tyler Technologies product operating on version 2024.1.0.899.
14. Electronic Ordering System: Provide literature, information, and presentation materials on your firm’s on-line ordering system.
15. Reports & Data Analytics: Provide examples and list all standard “ad hoc” reports available to the City, including roles such as “Items Catalog Program Administrator”, “Department Customer”, etc., that are accessible based upon configured site access and user rights & privileges.

F. Mandatory Elements:

All proposals must adhere to the following guidelines:

1. All proposals must be submitted on 8 ½" X 11" page sizing (no legal size or odd size pages are permitted) and fully address the Scope of Services.
2. A profile of the firm including the official contact person, telephone number and mailing address. If the firm is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified.
3. The proposal must include the signature of an official of the firm that is authorized to contract for the firm.
4. The firm’s experience, including length of time in business, and the experience of staff members and their role in this project.
5. A minimum of three (3) professional references with the nature of the services provided and contact information for each reference.
 - a. Letters of Reference will be submitted as a part of response submission on company letterhead/signature block to identify a submitter and source of reference.
 - b. Proposers are strongly encouraged to provide any customers who successfully utilize and integrate with a proposer’s Catalog Solution through data interface(s) to Enterprise ERP software application.
6. Disclose any civil litigation or alternative dispute resolution proceedings involving the Proposer (and any subcontractor proposed in a response submission) within the last year.
 - a. Continuing disclosure required for any new litigation, arbitration, or other proceeding commencing after proposal submission within 30 days of occurrence in a written statement to the contact person identified.
 - b. Details of settlements that are prevented from disclosure by law may be annotated as such.
7. Proposal for services and methodology for delivery of services.
8. Reasoning that explains why the proposed approach will achieve the City’s objectives.
9. Timeline for completing the project.

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10. Proposals may not be withdrawn for a period of 120 days following the opening of this Request for Proposal. Prices MUST also be free of duties and federal, state, and local taxes unless otherwise imposed by a governmental body, and applicable to the material on the proposal.
11. Pricing: The proposer should submit a unit cost for each item and a flat percentage discount from the wholesaler (MSRP) catalog using the list price for all items within their respective categories proposed as apart of response submission. Items pricing for items most commonly sold or demanded by various customers in business offerings should be submitted. ***Subsequent invoicing shall include, as a part of the City's monthly payment reconciliation for purchases previously completed, an itemized line item for each good/product outlining the line-item description, "MSRP Price," percentage discount from the wholesaler catalog to ensure City staff validation of contract pricing before payments are rendered.***
 - a. Proposers may state if a "purchasing cooperative" is quoted from as a basis of cost estimation and response submission for City consideration if core list offerings and the scope of services requested can be fulfilled by a proposer's existing cooperative contract offerings.
 - i. Any award consideration provided by a proposer's usage of an existing purchasing cooperative will be subject to a City contract agreement stipulating Order of Precedence to ensure the City's outlined Scope of Services is addressed thoroughly.
 - b. ***Attachment E – Office Supplies Core List Offering & Pricing Sheet*** is to be included for proposers submitting for Office Supplies Electronic Catalog Solution.
12. Completed Request for Proposal Conditions Certification (Submittal Letter) electronic acknowledgment in City Procurement Portal (Yes/No).
13. Completed Request for Proposal Addendum electronic acknowledgment in City Procurement Portal (Yes/No).
14. Completed Attachment B – Functional and Technical Requirements Matrix.
15. Exceptions to any part of this document clearly delineated and detailed.
16. Responses that do not include all required forms/items may be deemed non-responsive.

G. City of Wichita Responsibilities:

1. Designate a Department contact person for any daily communication(s) required to ensure goods and/or services delivery.
2. Provide Contractor with appropriate facility, technology, & data infrastructure access(es) for completion of awarded goods and/or services including Items Catalog Solution "punchout" with the City's ERP financial system.
3. Provide Contractor with Contact Information for key City staff who will manage the contract.

H. Debriefing:

The City of Wichita encourages solicitation respondents to learn, grow, and improve their competitiveness for City procurement opportunities. In the event of an unsuccessful solicitation response, solicitation respondents may request a debriefing regarding the selection process from the project manager and the buyer/purchasing representative identified in the solicitation document. The City of Wichita Purchasing Office may be directly contacted at (316) 268-4636 for assistance regarding the debriefing process.

I. Challenges and Protests:

Challenges

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A challenge is defined as a written objection by any party interested in responding to either a bid or proposal (collectively referred to as solicitations), when that party wishes to have the City consider an addition, substitution or modification to the specifications stated in the outstanding solicitation.

The written challenge of the solicitation specifications must be filed with the Purchasing Manager located on the 12th Floor, Finance Department at City Hall, 455 N Main, Wichita, KS 67202, telephone number (316) 268-4636, at least five (5) business days before the solicitation opening due date and time as listed on the solicitation documents. Any challenge to solicitation specifications received after the five (5) business days deadline will not be considered by the City. The Purchasing Manager will acknowledge receipt of the challenge. The written challenge is to include the name, address, email address and telephone number of the interested party, identification of the solicitation number and project title, a detailed statement of the reasons for the challenge, supporting evidence or documentation to substantiate any arguments, and the form of relief requested, e.g. the proposed addition, substitution or modification to the specifications. The Purchasing Manager will investigate the written challenge and any evidence or documentation submitted with the challenge.

In the event of a timely challenge of the solicitation specifications to the Purchasing Manager, the affected pending solicitation shall not proceed further until the challenge is resolved by Purchasing Manager decision. The Purchasing Manager will issue a written decision, which will be posted on the City's Procurement Portal, wichita.gov/procurementportal for viewing by all interested parties. The decision rendered by the Purchasing Manager will be final.

Protests

A protest is defined as a written objection to a proposed award, or the award of a contract, with the intention of receiving a remedial result. In order to be considered valid, a protest must 1) come from an actual bidder or proposer for the contract, 2) who claims to be the rightful award recipient, 3) whose economic interest may be affected substantially and directly by the award of a contract or by the failure to award a contract. Suppliers or subcontractors to a bidder or proposer cannot file a valid protest. A valid protest can only be filed by a bidder or proposer which can show that it would be awarded the contract if the protest were successful. Therefore, all conditions numbered 1 through 3 listed above in this paragraph must be met.

The written protest for bids must be filed with the Contract Compliance Officer located on the 12th Floor, Finance Department, City Hall, 455 N Main, Wichita, KS 67202 prior to 9:00a.m. of the Tuesday immediately following the posting of the notice of intent to award on the City's Purchasing Bid Results site <https://www.wichita.gov/DocumentCenter/Index/829>. Failure of a protestor to file a written protest related to the award of a contract prior to the 9:00 a.m., Tuesday deadline will invalidate that protest and cause it not to be considered.

The written protest for proposals must be filed with the Contract Compliance Officer located on the 12th Floor, Finance Department, City Hall, 455 N Main, Wichita, KS 67202 prior to 5:00 p.m. on the third business day following the day of issuing an email or written notification of award. Failure of a protestor to file a written protest related to the award of a contract prior to 5:00 p.m. on the third business day deadline will invalidate that protest and cause it not to be considered.

The Contract Compliance Officer will acknowledge receipt of the written protest. The written protest is to include the name, address, email address and telephone number of the protestor, identification of the solicitation number or contract number and project title, a detailed statement of the reasons for the protest

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which justify the relief sought, supporting evidence or documentation to substantiate any arguments, and a concise statement of the form of relief requested (e.g. reconsideration of the offer). All the above required information must be included in the protest at its submission. Untimely protests will be returned unopened. Incomplete protests will be rejected without consideration.

In the event of a valid, timely protest, the City shall not proceed with the execution of the contract until all City administrative remedies have been exhausted or waived, or until a determination is made that a contract award is required to protect the interests of the City.

The decision of the Contract Compliance Officer, based on review of the written protest and information available from City sources, will be rendered within ten (10) business days after receipt of protest, will recite the reasons for the decision, and be provided to the protestor by email or written notification.

The protestor may seek reconsideration of the decision of the Contract Compliance Officer's decision in writing to the Internal Auditor on the 13th Floor, City Manager Office, City Hall, 455 N Main, Wichita, KS 67202 prior to 5:00 p.m. on the third business day following the day of issuing an email or written notification of decision. Failure of a protestor to file a written reconsideration request related to the Contract Compliance decision prior to 5:00 p.m. on the third business day deadline will invalidate that protest and cause it not to be considered. The Internal Auditor decision will be issued by email or written notification, within ten (10) business days after receiving the written reconsideration, unless this time for a response is extended in writing and agreeable by both parties.

The Internal Auditor's decision will be final, unless the protestor seeks a hearing before the City Council, by written request filed with the City Clerk, located on the 13th Floor, City Hall, 455 N Main, Wichita, KS 67202, prior to 5:00 p.m. on the third business days after issuance of the Internal Auditor written decision. Failure of a protestor to file a written reconsideration request related to the internal Auditor's decision prior to 5:00 p.m. on the third business day deadline will invalidate that protest and cause it not to be considered.

If there is a timely written reconsideration request, the protestor may seek reconsideration of the decision of the Internal Auditor by means of a hearing before the City Council. This hearing must be in aid of the City Council's legislative authority to approve contracts for goods, services, and public improvements on behalf of the City, and does not imply any due process right of the protestor in an unawarded, unexecuted contract. The hearing must be scheduled as soon as practicable according to the City Council's calendar. The hearing must be granted only upon such facts and issues as are presented in writing to the City Clerk for submission to City Council at or before noon on the Thursday preceding the scheduled hearing. No documents or other evidence must be accepted at the hearing. The protesting party must have available no more than 20 minutes for presentation of argument, followed by no more than 20 minutes of argument presented by City staff. The City Council may deliberate in executive session to seek the assistance of the City Attorney, but must deliver its decision from the bench during the City Council meeting.

If a written protest is made against any proposed award or the award of a contract that relies in part on federal funding, then the Contract Compliance Officer must notify the Granting Authority in writing with all information regarding the protest. A protestor must exhaust all administrative remedies with the City of Wichita before pursuing a protest with the Granting Authority. Protestors are put on notice that according

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to federal regulations, certain determinations made at the local level are not subject to appeal to the Granting Authority. If a review is granted by the Granting Authority, it will be limited to:

1. the City of Wichita's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
2. violations of Federal law or regulations.

The Contract Compliance Officer will provide notice to the Granting Authority Regional Office or Headquarters Office of any request for reconsideration before the City Council, and also provide notice of the decision rendered by the City Council, or any alternative resolution reached.

V. CONTRACT PERIOD AND PAYMENT TERMS

The term of this contract shall be for a three (3) year period with seven (7) one (1) year options to renew under the same terms and conditions by mutual agreement of both parties. Upon the End Date of the existing term, the contract shall renew for an additional one (1) year term and shall continue to automatically renew each year thereafter on the anniversary of the Effective Date (each such renewal, a "Renewal Term") unless either party provides thirty-day (30) prior written notice before the anniversary date of the "Effective Date" for a period Not to Exceed an aggregate contract term of ten (10) years. Specific project details (Statement of Work, Milestones, etc.) will be negotiated prior to execution of contract. City of Wichita mandatory contract provisions, as incorporated into Exhibits A-B, dated 12/20/24, are not negotiable. Once goals as outlined are met and parties mutually agree that terms have been satisfied, the contract shall be complete.

Either party may cancel its obligations herein upon one hundred-eighty day (180) prior written notice to the other party. This contract is subject to the availability of funds appropriated by, and at the discretion of, the Wichita City Council. It is understood that funding may cease or be reduced at any time, and in the event that adequate funds are not available to meet the obligations hereunder, the city reserves the right to terminate this agreement upon thirty (30) days prior written notice to the contracted party. Payment will be remitted following receipt of a detailed invoice.

VI. INSURANCE REQUIREMENTS

LIABILITY INSURANCE SPECIFICATIONS

The **Successful Bidder** will be required to furnish a Certificate of Insurance (prior to the Purchase Order, Agreement, or Contract being issued) with the following minimum coverage:

1. Commercial General Liability

Covering premises---operations, xcu hazards, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate
Property Damage Liability	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate

2. Comprehensive Automobile Liability

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability	\$1,000,000 Each Occurrence
Property Damage Liability	\$1,000,000 Each Occurrence
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	\$1,000,000 Each Occurrence

3. Workers' Compensation to meet Statutory requirements.

4. Employers Liability

\$1,000,000 Each Accident
\$1,000,000 Occupational Disease
\$2,000,000 Annual Aggregate

The following additional coverages will apply when selected:

Required: YES ___ NO X ___

5. Professional Liability (Claims made basis)

\$1,000,000 Each Claim
\$1,000,000 Annual Aggregate

Required: YES ___ NO X ___

6. Pollution Liability

\$1,000,000 Each Claim
\$1,000,000 Annual Aggregate

Required: YES ___ NO X ___

7. Umbrella Liability

\$1,000,000 Each Claim
\$1,000,000 Annual Aggregate

Required: YES X ___ NO ___

8. Technology Errors & Omissions Liability

\$2,000,000 Each Claim
\$2,000,000 Annual Aggregate

The Insurance Certificate must contain the following:

The City of Wichita shall be added as primary and non-contributory additional insured. The policy shall also provide coverage for contractor's/vendor's contractual obligations created in the Agreement. Coverage shall be the greater of the requirements stated here or the contractor's existing policy.

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Awarded proposer shall furnish a Performance/Maintenance Bond in the amount of 100% of the Contract price. The obligation of such Performance/Maintenance Bond shall be made payable to the City as security for faithful performance of the Contract. The form of such bonds shall be as approved by the City. A current power of attorney for the person signing the bonds as a representative of the Surety shall be attached to the bond. The Performance/Maintenance Bond shall provide for a maintenance period of two (2) years following the Go Live date and acceptance of the Project by the City CIO. Bonds must delete any reference to a notice period or claims period that is less than the five (5) year statute of limitations applicable under Kansas law.

The executed bonds shall be delivered to the City at the same time as the executed Contract. The bonds shall be issued by a solvent Surety, certified to operate within the State of Kansas and which is listed in the current issue of the U.S. Treasury Circular 570. If specifically requested by the City, awarded proposer shall obtain and submit information on the Surety's financial strength rating. The City shall have the right to reject a Surety not meeting these requirements.

The Certificate of Insurance must be submitted **within ten (10) days** after notification of award to the City of Wichita Purchasing Manager, City Hall, 12th Floor, 455 North Main, Wichita, Kansas, 67202-1694. Certificates of Insurance not meeting or exceeding the contract requirements will be rejected, and if not cured, may be grounds for termination.

END OF SPECIFICATIONS

(12/2023)

VII. GENERAL SPECIFICATIONS:

GENERAL SPECIFICATIONS

KANSAS OPEN RECORDS ACT

Pursuant to the Kansas Open Records Act (K.S.A. 45-215 et seq.), all proposals received become a public record once award of the contract or agreement has been approved by the City Council. Consultants should not expect the City to seek confidentiality protection for any claimed privileged or proprietary information in the written qualification just because the material is marked "confidential" or "proprietary." For any essential information that the consultant reasonably believes can be defended as being exempt from disclosure under the Act, the informal must be capable of being separated or redacted from the balance of the qualification and should be clearly and specifically marked as confidential or proprietary. For any material so designated, the City will seek to claim confidentiality if the justification for such confidentiality is readily apparent or if the bidder requests that the City to contact the bidders for guidance before making the material public. The City cannot guarantee the confidentiality of claimed material, however.

PROPOSAL FORMS

All proposals MUST be electronically submitted and acknowledged (Yes/No) by an officer or employee authorized to submit and bind the proposer to the terms of the solicitation and proposer. Any exceptions, to the specifications, terms and/or other conditions concerning the proposal, must be noted in the "proposal" submitted to be considered. The "proposal" is to be submitted electronically through the City's Procurement Portal (wichita.gov/procurementportal) using a secure login/password. Vendors are requested to submit current literature or brochures relating to their proposal.

CONFLICT OF INTEREST

The firm is required to disclose that it has no conflict of interest with regard to any officer or employee of the companies involved including the City of Wichita.

LICENSE

Vendors bidding on commodities or services for the City of Wichita must be currently licensed by the City of Wichita or the State of Kansas, where applicable, before a purchase order or contract will be issued.

CONTRACT

The successful vendor agrees to enter into a contract with the City, and when required, as per specifications, to furnish bond by a surety company authorized to do business in the State of Kansas.

SUBCONTRACTING/JOINT VENTURES

Respondents are encouraged to consider subcontracting portions of the contract to emerging and disadvantaged businesses and women-owned businesses. A joint venture between two or more vendors is wholly acceptable if it serves the best interests of the City of Wichita. If this is done, the names of the proposed subcontracting vendors must be clearly identified in the qualification. Following an award of the contract, no additional subcontracting will be permitted without the express prior written consent of the City of Wichita. The firm receiving the contract award will be responsible for any work of such subcontractors and sign the contract with the City of Wichita.

EMERGING & DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION ENCOURAGEMENT

The City of Wichita encourages all vendors to include emerging & disadvantaged business participation in their proposals. Therefore, each consultant shall specifically identify the participation of emerging and disadvantaged contractors and subcontractors in the work to be performed by the consultant and shall list such emerging and disadvantaged contractors or subcontractors by name and show the dollar amount of work to be performed by each in the proposal.

ARBITRATION PROVISIONS

"Notwithstanding anything to the contrary contained in these proposal documents or the contract to be awarded herein, the City shall not be subject to arbitration and any clause relating to arbitration contained in these proposal documents or in the contract to be awarded herein shall be null and void."

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ANTITRUST LITIGATION CLAUSE

"For good cause, and as consideration for executing a purchase order/contract, the contractor, acting therein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the City of Wichita, all rights title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the City of Wichita, Kansas, pursuant to a purchase order/contract.

CONSTRUCTION - PAVING PROJECTS

On construction or paving projects, contractors **MUST** contact the City Controller's Office, City Hall, 12th Floor, 455 North Main Street for a Kansas Sales Tax Exemption Certificate prior to starting work. Contractors will be responsible for paying Kansas Sales Tax on any purchase for these projects made before the certificate is issued.

RESTORATION

"Contractor shall, as a condition of final payment, restore all right-of-way and adjacent private property which has been disturbed, damaged or otherwise affected by construction to a condition equal to or better than existed prior to the commencement of construction. Such restoration shall include but not be limited to regrading and seeding of areas where grass was planted and growing prior to construction; provided, however, such regrading and seeding of lawn areas, when completed, shall be considered to be restoration of an area to a condition equal to or better than previously existing grass growth and Contractor shall have no responsibility to ensure growth of such seeded area(s). This restoration shall be considered part of the contract work and Contractor shall be responsible for the performance of such restoration work in the same manner as it is responsible for the performance of the contract work."

FEDERAL EXCISE TAX

The articles specified in this proposal are for the exclusive use of the City of Wichita, Kansas. Therefore, Federal Excise Tax shall not be imposed. The City of Wichita, Kansas Federal Excise Tax Exemption Certificate Number is 48 77 0021K.

ESTIMATED QUANTITIES

If estimated quantities are shown, on the "Request For Formal Proposal" form, they are used to evaluate the proposal only. The figure(s) listed is the estimated usage only and is not intended to limit or guarantee in any way, the amount the City may purchase under the purchase order/contract.

CITY OF WICHITA CREDIT CARD

Presently, many City Agencies use a City of Wichita Procurement Card (Visa) in lieu of a City warrant to pay for some of its purchases. No additional charges will be allowed for using the card.

DELIVERY

Delays in delivery caused by bona fide strikes, government priority or requisitions, riots, fires, sabotage, acts of God or any other delays deemed by the Purchasing Manager to be clearly and unequivocally beyond the contractor's control, will be recognized by the City, and the contractor will be relieved of the responsibility of meeting the delivery time, as stipulated in the contract, upon contractor's filing with the Purchasing Manager a notarized just and true statement signed by a responsible official of the contractor's company, giving in detail all the essential circumstances which, upon verification by the City, justifies such action by the Purchasing Manager.

AWARD

The City, through its Purchasing Manager reserves the right to accept or reject any or all proposals and any part of parts of any proposal and to waive formalities therein to determine which is the most beneficial proposal. Any proposal which is incomplete, conditional, obscure, or which contains additions not called for or irregularities of any kind, may be cause for rejection of the proposal. All proposals are awarded subject to a check of the computations shown on the "Request For Proposal" form. In the event of a discrepancy in the extension(s) or total for the item(s), the unit cost shall prevail.

Vendors must guarantee proposal prices for a period of one hundred twenty (120) days after the proposal submission.

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VIII. REQUEST FOR PROPOSAL CONDITIONS CERTIFICATION (SUBMITTAL LETTER)

Solicitation Conditions

1. **Certification 1- No Unilateral Contact:**

The Consultant hereby certifies they are aware that all communications between a Proposer and the City regarding a proposal or the proposal process should only be directed to Purchasing Division staff. That if any contact with any other City employee that is necessary to clarify technical aspects of the proposal or the RFP that communication will be coordinated through the Purchasing Division and the listed designated project manager. The City Policy prohibits any City employee from having any interaction with any representatives of any entity that is considering or has responded to a RFP; and that any employee can be subject to discipline included termination for violating City Policy.

2. **Certification 2-No Improper Influence:**

- A. The Consultant has not employed or retained for a commission, percentage, brokerage, contingent fee, override or other consideration, any firm or person at any time or for any purpose, (other than a bona fide employee working solely for the above Consultant) to **solicit** or secure this Agreement.
- B. The Consultant has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.
- C. The Consultant has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if any).

3. **Certification 3- No Publicly Funded Lobbying:**

No Lobbying and Influencing Federal and/or City Employees or City Council Members:

- A. No Federal or locally appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, an officer or employee or City Council member of the City of Wichita, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities" in accordance with its instruction.

4. **Certification 4-No Conflict of Interest:**

Conflict of Interest

The Consultant certifies that no member, officer, employee, agent, or City Council member of the City of Wichita member exercising any functions or responsibilities with respect to the program outlined in this contract shall have any personal financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. The Consultant shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purposes of this section. The Consultant shall use due diligence to ensure employees, Board members, family members and officers do not participate in contracts receiving funds pursuant to this agreement.

On behalf of the Proposer, electronic acknowledgment via the City's Procurement Portal (wichita.gov/procurementportal) certifies the Proposer's current compliance with all of the above requirements and that it will continue to adhere to these requirements until this Project is awarded. Proposer understand that its failure to so adhere or to have made false representations on these certification(s) may cause its Proposal to be rejected from consideration for this and future solicitations.

EXHIBIT A
CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*). City specifically reserves and does not intend to waive any and all defenses, limitations of liability or damages, and/or immunities available to it under the Kansas Tort Claims Act or other state or federal law. It is understood that the duty to indemnify or hold harmless includes the duty to defend. This indemnification and hold harmless clause shall apply whether or not insurance policies shall have been determined to be applicable to any of such damages or claims for damages. In no event shall either party be obligated to indemnify the other on account of the negligence or willful misconduct of the party seeking indemnity or any agent or employee thereof.
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state, and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption. City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the

data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.

12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*), the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*), the Discrimination Against Military Personnel Act, K.S.A. 44-1125, and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA); (b) to not engage in discrimination in employment against its contractors, subcontractors, or employees on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law (“protected class”), subject to the qualifications found at 2.06.060 of the Municipal Code of the City of Wichita and to follow other applicable provisions of the City of Wichita Non-Discrimination Ordinance found at Chapter 2.06.010 *et seq.* of the Municipal Code of the City of Wichita; (c) to include in all solicitations or advertisements for employees the phrase “equal opportunity employer;” (d) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (e) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor.

Contractor’s failure to comply with the reporting requirements of (d) above, or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission or City of Wichita Hearing Officer, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty; and (g) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City without incurring contractual damages or penalty.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state, and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state, and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
16. **No Assignment.** The services to be provided by the **VENDOR** under this Contract are personal and cannot be assigned, delegated, sublet, or transferred without the specific written consent of the **CITY**.
17. **Third Party Exclusion.** This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.
18. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.
19. **Bankruptcy.** Contractor shall be considered to be in default of this Contract in the event Contractor (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by Contractor for the purpose of effecting any of the foregoing.
20. **Ownership of Data.** All data, forms, procedures, software, manuals, system descriptions, and workflows developed or accumulated by Contractor in relation to this Agreement shall be owned by City and shall be handed over and/or returned to City upon the expiration or termination of this Agreement. Contractor shall not release any such materials without written approval of the City.

(Rev. 12/20/2024)

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EXHIBIT B
CITY OF WICHITA MANDATORY INDEPENDENT CONTRACTOR ADDENDUM

1. The parties agree Contractor shall satisfy all tax and other governmentally imposed responsibilities including, but not limited to payment of state, federal, and social security taxes; unemployment taxes; workers' compensation and self-employment taxes. No federal, state, or local taxes of any kind shall be withheld or paid by City and Contractor shall indemnify City for its failure to comply with Contractor's responsibilities under this paragraph.
2. The parties agree that as an independent contractor, Contractor is not entitled to any benefits from City, including but not limited to: (a) unemployment insurance benefits; (b) workers' compensation coverage; or (c) health insurance coverage. Contractor may only receive such coverages if provided by Contractor or an entity other than City. Subject to the foregoing, Contractor hereby waives and discharges any claim, demand, or action against City's workers' compensation insurance and/or health insurance and further agrees to indemnify City for any such claims related to Contractor's operations or the performance of services by Contractor hereunder.
3. The parties hereby acknowledge and agree that City will not: (a) require Contractor to work exclusively for City; (b) establish means or methods of work for Contractor, except that City may provide plans and specifications regarding the work but will not oversee the actual work. City may establish performance standards for the contracted outcomes. (c) pay to Contractor a salary or hourly rate, but rather will pay to Contractor a fixed or contract rate; (d) provide training for Contractor on performance of the services to be done; City may provide informational briefing on known conditions. (e) provide tools or benefits to Contractor (materials and equipment may be supplied if negotiated); (f) dictate the time of Contractor's performance; and (g) pay Contractor personally; instead, City will make all checks payable to the trade or business name under which Contractor does business.
4. Contractor does not have the authority to act for City, to bind City in any respect whatsoever, or to incur debts or liabilities in the name of or on behalf of City.
5. Unless given express written consent by City, Contractor agrees not to bring any other party (including but not limited to employees, agents, subcontractors, sub-subcontractors, and vendors) onto the project site.
6. If Contractor is given written permission to have other parties on the site, and Contractor engages any other party which may be deemed to be an employee of Contractor, Contractor will be required to provide the appropriate workers' compensation insurance coverage as required by this Agreement.
7. Contractor has and hereby retains control of and supervision over the performance of Contractor's obligations hereunder. Contractor agrees to retain control over any allowed parties employed or contracted by Contractor for performing the services hereunder and take full and complete responsibility for any liability created by or from any actions or individuals brought to the project by Contractor.
8. Contractor represents that it is engaged in providing similar services to the public and not required to work exclusively for City.
9. All services are to be performed solely at the risk of Contractor and Contractor shall take all precautions necessary for the safety of its and the City's employees, agents, subcontractors, sub-subcontractors, vendors, along with members of the public it encounters while performing the work.
10. Contractor will not combine its business operations in any way with City's business operations and each party shall maintain their operations as separate and distinct.

(Rev. 12/20/2024)

IX. ATTACHMENT A – IT TECHNOLOGY AGREEMENT TEMPLATE

Attachment A – IT Technology Agreement Template

CITY OF WICHITA

Information Technology Agreement

THIS Information Technology Agreement (“Agreement”) is made by and between the City of Wichita, hereinafter referred to as the “City” and [ENTER the company name of the Contractor/Vendor], hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, the City has sought competitive proposals for the provision of *Title of Good(s)/Service(s)* for its DEPARTMENT and CONTRACTOR has submitted the bid most beneficial to the CITY and is ready, willing and able to provide the services required by the CITY;

WHEREAS, the Contractor has represented that it is capable of implementing the Statement of Work as contained herein and the City has selected the Contractor as the offeror most advantageous to the City of Wichita; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions.

- A. Acceptance shall mean the approval of all Deliverables by the CIO of the City or designated representative.
- B. Anonymous Data shall mean anonymous data that by virtue of the method of collection can never reasonably be connected with the person providing. This data will be limited to aggregate Information relevant to system utilization as associated with the Contractor’s application implemented for the City.
- C. Change Request shall mean the document utilized to request changes or revisions in the Statement of Work.
- D. Chief Information Officer (CIO) shall mean the CIO of the City of Wichita or designated representative.
- E. City Data shall mean all data created or in any way originating with the City, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the City that has not been cleared for public release in accordance with applicable City statutes, regulations, and policies and is provided by or on behalf of the City to the Contractor or its subcontractor(s), whether such data or output is collected, developed, received, transmitted, used, or stored on the City’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the City or by the Contractor.
- F. City Identified Contact shall mean the person or persons designated in writing by the City to receive Security Incident or breach notification.
- G. Contractor shall mean the contractor and its employees, contractors, subcontractors, agents and affiliates who are providing the services agreed to under this Agreement.
- H. Contractor Data Libraries shall mean Information, which may or may not be publicly available, that is selected, gathered and assembled by the Contractor into compilations in various forms and formats for use with the system components of the licensed application.

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- I. Data Breach shall mean the unauthorized access by a non-authorized person or persons that results in the use, disclosure or theft of the City's Personal Data or Non-Public Data.
- J. Data at Rest shall mean all data in storage. Data at Rest includes but is not limited to archived data, data which is not accessed or changed frequently, files stored on hard drives, USB thumb drives, files stored on backup tape and disks, and also files stored off-site or on a storage area network (SAN).
- K. Data in Transit shall mean data that is moving across public or "untrusted" networks such as the Internet, and data that is moving within the confines of private networks such as corporate Local Area Networks (LANs).
- L. Deliverable shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined in [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)].
- M. Emergency Support shall mean technical support provided by the Contractor outside of normal support hours for any problem or issue that is impacting the City's ability to conduct business and cannot wait until the next business day to resolve.
- N. Exfiltration shall mean any unauthorized release of data from within an Information system. This includes copying the data through covert network channels or the copying of data to unauthorized media.
- O. Go-Live shall mean the event at which the Software is released by the Contractor and accepted for production by the City. The Go Live date may be amended or modified by mutual specific written agreement between the Contractor and the City as specified in [ENTER paragraph number for Change Management (e.g. Paragraph 29.)].
- P. Know How shall mean all technical Information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- Q. Intellectual Property shall mean any and all proprietary Information developed pursuant to the terms of this Agreement.
- R. Information shall mean any communicable knowledge or documentary material, regardless of its physical form or characteristics.
- S. Information System shall mean a set of Information resources organized for the collection, storage, processing, maintenance, use, sharing, dissemination, disposition, display, or transmission of Information.
- T. Non-Public Data shall mean data, other than personal data, that is not subject to distribution to the public as public Information. It is deemed to be sensitive and confidential by the City because it contains Information that is exempt by statute, ordinance or administrative rule from access by the general public as public Information.
- U. Payment Invoice shall mean a detailed, certified and written request for payment of services provided from the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.
- V. Personal Data shall mean data that includes Information relating to a person that identifies the person by name and has any of the following personally identifiable Information (PII):

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government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number(s), credit or debit card numbers; or any other information that is linked or linkable to an individual (e.g. date and place of birth, mother's maiden name, address information such as street address or email address, or other medical, educational, financial, and employment information).

- W. Project shall mean a process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, Deliverables, and a budget. The Project terminates successfully once the Project scope is achieved, the final Deliverable is received and it is approved by the City CIO. The Project terminates unsuccessfully based upon failure of performance under the terms of this Agreement, or upon City CIO direction, if termination is required for other reasons including, but not limited to, technical, legal, political, or financial considerations. Under the terms of this Agreement the Project is defined within [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)].
- X. Project Manager shall mean a qualified person from the City responsible for all aspects of the Project. Under the terms of this Agreement, the City Project Manager shall be [ENTER name of City's Project Manager assigned to this Project] or designated representative.
- Y. Security Incident shall mean the potentially unauthorized access by non-authorized persons to Personal Data or Non-Public Data the Contractor believes could reasonably result in the use, disclosure or theft of a City's unencrypted Personal Data or Non-Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach.
- Z. Service Level Agreement (SLA) shall mean an agreement between the City and the Contractor that is subject to the terms and conditions of this Agreement which describes the IT service (people, processes, and technology) to be provided by the Contractor for the City and specifies the goals, responsibilities and outcomes. The SLA shall be incorporated in or referenced directly as an attachment in [ENTER paragraph number for Scope of Work, SLA (e.g. Paragraph 2. C. 6))].
- AA. Software shall mean any software or other products, including the licensed application, delivered or utilized in conjunction with the licensed application under this Agreement.
- BB. Statement of Work shall mean a detailed description of the specific services or tasks the Contractor is required to perform under this Agreement including the overview, location of work, scope of work, deliverables and payment schedule, measures, incentives and penalties applicable standards, acceptance criteria, and special requirements. This shall be incorporated in [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)] of this Agreement or referenced directly as an attachment in [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)].
- CC. Subscription shall mean the annual renewal of Software license(s), and/or technical support services, and/or maintenance support services of the Contractor's Software.
- DD. [Select applicable type of Service]

Self-Hosted shall mean the capability of the City to use the Contractor's Software running on the City's client-server computing infrastructure. The City manages and controls the underlying infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited Contractor and/or user-specific application configuration settings.

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Software-as-a-Service (SaaS) shall mean the capability provided to the City to use the Contractor's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The City does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

Platform-as-a-Service (PaaS) shall mean the capability provided to the City to deploy onto the cloud infrastructure City-created or –acquired applications created using programming languages and tools supported by the Contractor. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The City does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.

Infrastructure-as-a-Service (IaaS) shall mean the capability provided to the City to provision processing, storage, networks and other fundamental computing resources where the City is able to deploy and run arbitrary Software, which can include operating systems and applications. The City does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed application; and possibly limited control of select networking components (e.g., host firewalls).

2. **Statement of Work.** CONTRACTOR shall provide to the CITY and complete all services as specified in the following, which shall serve in their entirety as the Scope of Services for this Agreement: **Modify this paragraph as appropriate to describe or define the requirements associated with the delivery of goods and/or services using the required categories of Overview, Location of Work, Scope of Work, Deliverables and Payment Schedule, Measures, Incentives and Penalties, Applicable Standards, Acceptance Criteria, and Special Requirements.]**
- A. The City's Request for Proposal No. FP240321 ("RFP"), attached as Exhibit C hereto and incorporated herein;
 - B. CONTRACTOR'S Response to RFP, attached as Exhibit D hereto and incorporated herein; and incorporated herein, which shall be subject to the same terms and conditions of this Agreement, and the Exhibits incorporated herein.
 - C. **Overview** [Insert a statement describing the purpose for providing goods and/or services associated with this Agreement. Include a description of the requirements in terms of success criteria and appropriate outcomes, measurable performance standards, and acceptable quality levels in terms of allowed or acceptable deviation from defined performance standards will be allowed].
 - D. **Location of Work** Items will be procured, purchased, and delivered to various City facility locations ongoingly. Facility location addresses may change or be amended over time as City facility changes occur.
 - E. **Scope of Work** [Identify in detail the specific goods and/or services to be provided and/or performed. Include objectives and associated goals, technical considerations, assumptions and constraints, tasks, and responsibilities of both parties. At a minimum, the categories of **Kick-off Meeting, Communications Plan, Progress Meetings, Training and Documentation, Application**

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License, and Service Level Agreement will be required as applicable.]

1) Kick-off Meeting.

The Contractor will perform a Project Initiation meeting thirty (30) calendar days prior to the start of the system [implementation/integration/installation] either through an audio-video conference call or an on-site meeting with the City. Prior to the call or meeting, the Contractor will forward, via email, the Contractor's [Implementation/Integration/Installation] plan that details the processes and steps including, but not limited to those processes and steps associated with the configuration, testing, and product/system Acceptance that will be completed during the Project. The key tasks include:

- Formally transition and introduce the Project team and their respective responsibilities.
- Discuss potential risks/issues based upon the City's and the Contractor's experience.
- Review the Contractor's [Implementation/Integration/Installation] plan that outlines the processes and steps.
- Establish the Project schedule including, but not limited to:
 - Milestones
 - Dependencies
 - Contingencies
 - Resources
 - Durations

This schedule shall be created by the Contractor in [Enter required scheduling tool/format to be used such as Microsoft Project or Smartsheet] and maintained by the City's Project Manager in coordination with the Contractor's and City's Project teams.

2) Communications Plan.

The Contractor shall create a Communications Plan due fifteen (15) calendar days after completion of the Kick-Off meeting and shall be provided to the City in [Enter required format to be used]. This plan shall cover methods used to gather and store Information; limits, if any, on who may give direction and to whom; escalations and reporting relationships; list of contact Information; schedule for distribution of Information; weekly status meetings; and a method to update the communications plan as the Project progresses. The Communications Plan will be maintained by the City's Project Manager in coordination with the Contractor's and City's Project teams.

3) Progress Meetings.

Progress meetings shall be scheduled every week throughout the Project unless agreed to in advance by all parties to be rescheduled. Attendance by the Contractor and the City is required unless otherwise indicated. These meetings shall include:

- Progress Updates
- Milestones Achieved
- Milestones Missed
- Future Milestones
- Dependencies
- Issues
- Risks

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- Project Communications
- Actions Review

4) Training and Documentation.

The Contractor shall provide training updates to the City's staff to acquaint them with new or changed functionality and capabilities resulting from enhancements, major or minor revision releases, or maintenance/bug fixes which directly or indirectly impact the licensed application and the City's configuration and use thereof.

The Contractor shall provide training material updates for any changes occurring as a result of application enhancements, major or minor revision releases, or maintenance/bug fixes which directly or indirectly impact the [Name of System or Application] and the City's configuration and use thereof.

The Contractor shall update all related [Name of System or Application] documentation as a result of enhancements or major or minor revision releases which directly or indirectly impact the [Name of System or Application] and the City's configuration and use thereof.

5) Application License.

Contractor hereby grants the City a [Enter type of license, as applicable, (e.g. (non-exclusive, exclusive, co-exclusive, sole), (royalty free, non-royalty free), (non-transferable, transferable) (irrevocable, term of years))], to use the [Name of System or Application] and any and all upgrades / updates, bug fixes / corrections and revisions which may occur during the term of the Agreement.

Configuration or customization of the application made according to the City's requirements will be performed by the Contractor. Ongoing maintenance of these configurations or customizations will be provided by the Contractor to maintain continued compatibility with the [Name of System or Application] as upgrades / updates, bug fixes / corrections, or revisions occur to the application.

The Contractor will own in its entirety such configuration development and the Intellectual Property related to the Contractor's application; however the City shall have a [Enter type of license, as applicable, (e.g. (non-exclusive, exclusive, co-exclusive, sole), (royalty free, non-royalty free), (non-transferable, transferable) (irrevocable, term of years))] license to use such works from the date that such work is completed and released to the City.

The City shall own all right, title, and interest to all City Data entered into the licensed application by any user who is or has been authorized and licensed to use the application. The Contractor shall own all right, title, and interest in any Anonymous Data. Upon request, the Contractor shall provide copies of the Anonymous Data to the City in the format requested.

All archival and backup copies of the application are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

The Contractor must uphold the Agreement and all the terms therein which includes the [Name of System or Application] and all Deliverables as set forth in Paragraph 2.D. If the Contractor 1) breaches the Agreement; 2) ceases to do business; or 3) this Agreement is terminated by either party as defined in Paragraph 6, the Contractor shall provide the City with a 1-year license Subscription that the City may or may not exercise. If the Contractor

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is not able to or does not provide said license Subscription, the Contractor shall make available to the City:

- a) The latest available licensed application program source code, compiler, utilities, and related documentation necessary for the continued operation and maintenance of the application as meant for the licensed application provided or developed under this Agreement by the Contractor and listed as part of the purchased system. The source code, compiler, utilities, and related documentation shall be provided on CD or via an Electronic Data Transfer to the City.
- b) All related documentation for Software developed by third parties to the extent that the Contractor is authorized to disclose such Software. In such circumstances, the City shall have an unlimited right to use, modify and copy the source code and documentation.

A [ENTER # of years (i.e. one (1), two (2), three (3), etc.)] Year License, and/or Support, and/or Maintenance Subscription may be renewed annually [as set forth in Paragraph 2.D (if included as part of Deliverables and Payment Schedule)]. Users are defined as City employees or partners and vendors that work with the City. Each license includes full use of the [Name of System or Application]. [If As-a-Service, include: Also included is all hosting, operation, maintenance and data back-up, unlimited support by phone, email, or web based.]

Restrictions on Application Use. The City shall not, directly or by permitting any third party to: 1) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the licensed application; 2) modify, adapt, create derivative works based upon, or translate the licensed application or any portion thereof; 3) resell, distribute, or otherwise grant any rights in licensed application or any portion thereof to any third party, including commercial time-sharing, rental, or service bureau use, or use the licensed application for the benefit of any third party; 4) access the licensed application or any portion thereof other than in connection with the City's internal use; or 5) publish or participate with any third party in any performance or benchmark tests or analysis relating to the licensed application or any portion thereof. A portion of the licensed application may be comprised of Contractor Data Libraries. The City acknowledges and agrees that the Contractor Data Libraries are original works of authorship created, developed and maintained by Contractor at great expense and that, in addition to being subject to the foregoing restrictions 1) through 5) and applicable copyright laws, are confidential Information of the Contractor that may only be used by the City for its internal use in conjunction with the use of the application components of the licensed application on the terms set forth in this Agreement.

- 6) Service Level Agreement (SLA). [The SLA shall be incorporated in or referenced directly as an attachment in this paragraph. Categories listed below shall, at a minimum be included.]
 - a) Service Description. [Define the service(s) to be provided to the City by the Contractor based on the use of IT and support of the City's business processes. Include service name, description, and desired outcomes in terms of utility and warranty.]

The Contractor shall provide [Enter description of services to be provided as part of the SLA].
 - b) Service Hours. The Contractor's shall provide support services during the period of [ENTER support period (i.e. Sunday through Saturday from 7:00 AM to 7:00 PM CT)].

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Emergency or after-hours support services shall be provided during the period of [Enter emergency support period (i.e. 7:00 PM to 7:00 AM CT)].

- c) Service Availability. The Contractor shall be available for support during the defined Service Hours as stated in Subparagraph 2. C. 6) b). [Define any specific requirements or limitations that relate to availability such as excluding availability during holidays]. The City shall first attempt to resolve any problem relating to the [Name of System or Application] by referring to the Contractor provided documentation. The City shall report to the Contractor any discrepancies between the [Name of System or Application] and the Contractor provided documentation.
- d) Reliability. [Define the measure of how long an IT Service can perform its agreed function without interruption. Usually measured as Mean Time Between Failure (MTBF) or Mean Time Between System/Service Incidents (MTBSI). Reliability can also be used to state how likely it is that a process, function, etc., will deliver its required outputs.]
- e) Acquisition and Operation. [Define responsibility for the acquisition and operation of hardware, Software and network support. The paragraph below only applies if type of service is Software-as-a-Service (SaaS), Platform-as-a-Service (PaaS), or Infrastructure-as-a-Service (IaaS). **Modify to define appropriate responsibilities for self-hosted environments.**]

The Contractor shall be responsible for the acquisition and operation of all hardware, Software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environment is the responsibility of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime) and provide service to City as defined in [ENTER paragraph number for Service Level Agreement (e.g. Paragraph 2. C. 6)]].
- f) Communication. [Define the communication plan between City and Contractor including responsible contacts and contact details, procedures for handling exceptions and complaints, satisfaction surveys, and service reviews.]
- g) Service Performance. [Define the service objectives and goals and the reports that will be produced by the Contractor, for the City, which communicates the comparison of actual service performance to service goals.]
- h) Types and Levels of Support. [Define the types and levels of support including service or process to be supported, responsibilities of Contractor, City, and service users, times (reaction and resolution), and commitments (availability targets, capacity performance, and service continuity).]
- i) Measures, Incentives and Penalties. [Define the performance metrics to measure agreed upon service performance standards and any incentives or penalties that will be imposed should the goals or expectations be met or not met.]
- j) Change Management Procedure. The Change Management Procedure is specified in [ENTER paragraph number for Change Management (e.g. Paragraph 29.)] of this Agreement.
- k) Security. [Define the security aspects to be observed when using the service (if applicable, references to relevant security policies).]

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- l) Glossary. [Define, as necessary, the terms and abbreviations applicable to the SLA NOT currently incorporated in this Agreement.]
- m) Amendments. [Location to track change history for the SLA.]
- n) Exclusions. No support shall be available, and the Contractor shall not be liable, for: (i) problems, errors, or Bugs resulting from configuration or faults in the City's computer or network operating systems or any third party software; (ii) hardware malfunctions, including cables, ports, printers, disk drives, etc.; or (iii) modifications made to the licensed application by a party other than the Contractor.
- o) Cost/Pricing. [Define, if applicable, the cost for the service provision(s) and rules for penalties and or charge backs.]

F. Deliverables and Payment Schedule.

[LIST specific Deliverable(s), due date(s), and associated payment schedule]

The due dates and payment schedule of the Deliverable(s) or otherwise, as set forth in [ENTER paragraph number for Deliverables and Payment schedule (e.g. Paragraph 2.D.)] shall not be altered or waived by the City without prior written approval, through the Change Management process, as defined in [ENTER paragraph number for Change Management (e.g. Paragraph 29.)].

G. Measures, Incentives and Penalties. [Define the performance metrics to measure agreed upon performance standards and any incentives or penalties that will be imposed should the goals or expectations be met or not met.]

H. Applicable Standards.

[Describe any industry specific standards that need to be adhered to in fulfilling the Agreement.]

I. Acceptance Criteria.

[Identify each Deliverable that has specific criteria, standards, specifications, or requirements that must be satisfied for acceptance. Include the criteria, standards, specifications, or requirements for each identified deliverable.]

Acceptance of Deliverables is defined in [ENTER paragraph number for Acceptance of Deliverables (e.g. Paragraph 4.)].

J. Special Requirements.

[Specify any special hardware or software required, specialized workforce requirements, such as degrees or certifications for personnel, travel requirements, and anything else not covered in the Agreement that if overlooked would pose problems or create unnecessary risk for the completion of the specific services, tasks, or Deliverables.]

1) Data Center Audit. [This paragraph only applies if type of service is Software-as-a-Service (SaaS), Platform-as-a-Service (PaaS), or Infrastructure-as-a-Service (IaaS). **Remove if not applicable.**]

The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary Information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

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- 2) Business Continuity and Disaster Recovery. [This paragraph only applies if type of service is Software-as-a-Service (Saas), Platform-as-a-Service (PaaS), or Infrastructure-as-a-Service (IaaS). **Remove if not applicable.**]
The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the City's recovery time objective (RTO) of XXX hours/days is met. (XXX shall be negotiated by both parties.)
- 3) Special Access Requirements. [This paragraph only applies if the Contractor will need remote access to systems or software associated with this Agreement that physically reside within the City's computing infrastructure. **Remove if not applicable.**]
The Contractor shall only use the City's Privileged Access Management (PAM) solution and associated process for access to [Enter what system(s)/software requires remote access for support and maintenance].
- 4) Compliance with Accessibility Standards. [This paragraph only applies if type of service is Software-as-a-Service (Saas), or Platform-as-a-Service (PaaS). **Remove if not applicable.**]
The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- 5) Web Services. [This paragraph only applies if type of service is Software-as-a-Service (Saas), or Platform-as-a-Service (PaaS). **Remove if not applicable.**]
The Contractor shall use Web services exclusively to interface with the City's data in near real time when possible.

3. Compensation.

- A. Compensation Schedule. The City shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in [ENTER paragraph number for Deliverables and Payment schedule (e.g. Paragraph 2.D.)]
- B. Payment. The City shall pay to the Contractor for services satisfactorily performed based upon Deliverables, milestones, and budget, with such compensation not to exceed [ENTER total amount of compensation in dollars (e.g. Five million two hundred ten thousand nine hundred sixty-five dollars and no cents (\$5,210,965.00))]. The total amount payable to the Contractor under this Agreement, including expenses, shall not exceed [ENTER total dollar amount of the agreement (e.g. \$5,220,000.00)]. This amount is a maximum and not a guarantee that the work assigned to Contractor to be performed under this Agreement shall equal the amount stated herein. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. Payment shall be tendered to the Contractor within **thirty (30) days** of the date of written Certification of Acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. The City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

- C. Costs Adjustment. If, during the term of this Agreement, the Contractor provides any hardware,

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Software, maintenance, training or documentation to any other of its customers at prices less than those specified in this Agreement or the Proposal, the City shall receive the benefit of those lower prices for any hardware, Software, maintenance, training or documentation received subsequently, and the costs for services and equipment specified in the Proposal or this Agreement shall be reduced accordingly.

Consumer Price Index (CPI). Agreement prices for hardware, Software, and/or service will remain firm through end of the Agreement Term pursuant to Paragraph 5.

Contractors must request price adjustments, in writing, 30 calendar days prior to the renewal or termination date of the Agreement. If a Contractor fails to request a price adjustment, no price adjustment request will be permitted until 30 calendar days prior to the next or following renewal or termination date of the Agreement. No retroactive Agreement price adjustments will be allowed.

The Contractor shall provide the City CIO clear and convincing evidence, satisfactory to the City, that all of the following conditions exist:

- 1) The increase is the result of increased costs outside the Contractor's control and not cost under the Contractor's control, and that;
- 2) The increase will not produce a higher profit margin for the Contractor than that on the original Agreement.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, and Wichita MSA as defined by the Federal Government.

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six-month average (January through June OR July through December [ENTER Agreement base (start) year (i.e. 2018)]); and each (January through June OR July through December [ENTER Agreement term end year (i.e. 2019) six-month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate.

D. Contractor Reimbursable Expenses.

Reimbursable expenses include coach class air fare, airport parking, economy class vehicle rental, cab, or public transportation, parking and tolls, fuel, reasonable lodging and meals, excluding alcohol, and other travel incidentals required to fulfill the Agreement. The Contractor shall provide the City with an estimate of reimbursable expenses for approval prior to any scheduled travel. Upon completion or execution of the prior-approved travel, the Contractor shall submit an invoice to the City CIO for actual expenditures incurred and shall attach receipts to the invoice requesting reimbursement, as backup for accounting purposes. In no event shall Contractor Reimbursable Expenses exceed a total cost of [ENTER total cost of reimbursable expenses].

4. Acceptance of Deliverables.

A. Submission. Upon completion of agreed upon Deliverables as set forth in [ENTER paragraph number for Deliverables and Payment schedule (e.g. Paragraph 2.D.)], Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the City Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in [ENTER paragraph number for Deliverables and Payment schedule (e.g. Paragraph 2.D.)].

B. Acceptance. The City CIO in conjunction with the City Project Manager shall determine if the

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Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the City CIO. In order to accept the Deliverable, the City CIO, in conjunction with the City's Project Manager, will assess the Deliverable and determine, at a minimum, that the Deliverable:

- 1) Complies with the Statement of Work as set forth in [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)];
- 2) Complies with the terms and conditions of the City's solicitation;
- 3) Complies with the Deliverable requirements as set forth in [ENTER paragraph number for Deliverables and Payment schedule (e.g. Paragraph 2.D.)];
- 4) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
- 5) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable by the City CIO, in conjunction with the City Project Manager, the City CIO will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the City Project Manager receives the Deliverable(s) and accompanying Payment Invoice.

- C. Rejection. Unless the City CIO gives notice of rejection within the fifteen (15) business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable, fifteen (15) days from the date the City Project Manager receives the Deliverable(s) and accompanying Payment Invoice, the City Project Manager will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have fifteen (15) business days to resubmit the Deliverable to the City Project Manager with all appropriate corrections or modifications made and/or addressed. The City CIO, in conjunction with the City Project Manager, will again determine whether the Deliverable(s) is Acceptable under and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable and thus rejected, the Contractor will be required to provide a correction plan that shall include a timeline for action acceptable to the City CIO. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The City may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the City may terminate this Agreement.

5. **Agreement Term.**

The term of this contract shall be for a one (1) year period with four (4) one (1) year options to renew under the same terms and conditions by mutual agreement of both parties. Upon the End Date of the existing term, the contract shall renew for an additional one (1) year term and shall continue to automatically renew each year thereafter on the anniversary of the Effective Date (each such renewal, a "Renewal Term") unless either party provides thirty-day (30) prior written notice before the anniversary date of the "Effective Date" for a period Not to Exceed an aggregate contract term of five (5) years. Specific project details (Statement of Work, Milestones, etc.) will be negotiated prior to execution of contract. Once goals as outlined are met and parties mutually agree that terms have been satisfied, the contract shall be complete.

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Either party may cancel its obligations herein to the other party within the process as outlined under 6. Termination.

6. Termination.

This Agreement may be terminated as follows:

- A. General. By either Party upon written notice to be delivered to the other party not less than sixty (60) calendar days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crimes due to misuse of state funds or due to the Appropriations paragraph herein.
- B. Right to Cure.
 - 1) As to the Contractor, the Notice of Termination shall include a description of the nonconformance or nonperformance by the Contractor. The Notice of Termination may include a period of fifteen (15) calendar days from date of Notice of Termination, for the Contractor to respond to the City to address the nonconformance or nonperformance of the Agreement that includes a Correction Plan and a Schedule for implementation of the Correction Plan. If the proposed Correction Plan and Schedule is acceptable to the City, the City shall notify the Contractor and the Notice of Termination shall be on hold pending satisfactory completion of the correction plan. If the Correction Plan and schedule are not met, the City shall re-issue the Notice of Termination.
 - 2) As to the City, the Notice of Termination shall include a description of the nonconformance or nonperformance by the City. The Notice of Termination may include a period of fifteen (15) calendar days from date of Notice of Termination, for the City to respond to the Contractor to address the nonconformance or nonperformance of the Agreement that includes a Correction Plan and a Schedule for implementation of the Correction Plan. If the proposed Correction Plan and Schedule is acceptable to the Contractor, the Contractor shall notify the City and the Notice of Termination shall be on hold pending satisfactory completion of the correction plan. If the Correction Plan and schedule are not met, the Contractor shall re-issue the Notice of Termination.
- C. Appropriations. By the City, if required by changes in city, state or federal law, or because of court order, or because of insufficient appropriations for the performance of this Agreement, the City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City terminates this Agreement pursuant

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to this subparagraph, the City shall provide the Contractor written notice of such termination at least ninety (90) calendar days prior to the effective date of the termination.

- D. Obligations and Waiver. By termination pursuant to this Paragraph, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS PARAGRAPH IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

7. **Termination Management.**

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
- 1) Transfer, deliver, and/or make readily available to the City property in which the City has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the City;
 - 2) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the City;
 - 3) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition;
 - 4) Take such action as the City may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 - 5) Agree that the City is not liable for any costs arising out of termination and that the City is liable only for the costs of Deliverables Accepted prior to the termination of the Agreement;
 - 6) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of City programs;
 - 7) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the City's receipt of government (federal, state, or local) program funds or grants, the Contractor shall remit to the City the full amount of the reduction.
 - 8) Should this Agreement terminate due to the Contractor's default, the Contractor shall be paid for the work completed and accepted to the date of the termination. Any remaining Agreement funds shall be used to procure a new Contractor. If the new Agreement to complete the work exceeds the funds remaining on the terminated Agreement, the Contractor agrees to reimburse the City for the difference between the balance remaining on the terminated Agreement and the new Agreement BUT IN NO EVENT SHALL THE CONTRACTOR BE OBLIGATED TO PAY AN AMOUNT THAT EXCEEDS THE AGGREGATE OF 200% OF THE FEES PAID UNDER THIS AGREEMENT AS STIPULATED IN [ENTER paragraph number for Liability paragraph (e.g. PARAGRAPH 34.)].
 - 9) In the event this Agreement is terminated for any reason or prior to term expiration, the Contractor shall, within five (5) business days of receiving or sending the notice of termination or sixty (60) business days prior to the term expiration date, provide to the City CIO at no additional cost a system/Software transition plan that includes a transition schedule, transition tasks and activities, resource requirements, acceptance criteria,

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management controls, risks and contingencies, transition team Information, and a transition impact statement (to include, but not limited to, performance requirements, system availability, security requirements, expected response times, system backups, expected transaction rates, initial storage requirements with expected growth rate, as well as help desk support requirements). Upon acceptance of the system/Software transition plan by the City CIO the Contractor shall, within ninety (90) business days and at no additional cost, transfer all data files and digital content, Software, documentation, Know How, Intellectual Property and other materials, whether provided by the City or created by the Contractor under this Agreement, to the City, including but not limited to, the City's data libraries and related passive/active data dictionaries, data description specifications, all current user, administrator, and operational documentation, and functional technical descriptions of each program and data flow diagrams.

- 10) Not take any action to intentionally erase or destroy any City Data or digital content until the City has received or retrieved its data or digital content as defined in the system/Software transition plan.
- 11) The City shall be entitled to any post-termination assistance made available with respect to the services provided under this Agreement unless otherwise defined and established in the system/Software transition plan.
- 12) After termination of the Agreement and completion of the system/Software transition plan, the Contractor shall have no obligation to maintain or provide any City Data or digital content in its possession or under its control. The Contractor shall, unless legally prohibited, permanently delete, destroy, and securely dispose of all City Data and digital content according to National Institute of Standards and Technology (NIST) approved methods defined in NIST Special Publication 800-88 Revision 1, December 2014 or current version. Certificates of destruction shall be provided to the City.

- B. City. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the City shall:
- 1) Retain ownership of all work products and documentation created pursuant to this Agreement; and
 - 2) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

8. **Data Ownership.**

The City shall own all right, title and interest in its data that is related to the services provided by this Agreement. The Contractor shall not access City user accounts or City data, except 1) in the course of data center operations, 2) in response to service or technical issues, 3) as required by the express terms of this Agreement or 4) at the City's written request.

9. **Data Protection** [Select applicable type of Service]

Self-Hosted.

The Contractor shall safeguard the confidentiality, integrity and availability of City Information to which the Contractor has access and comply with the following conditions:

- A. The Contractor shall implement and maintain appropriate administrative and technical security measures to safeguard against unauthorized access, Data Breach, Exfiltration, disclosure or theft of Personal Data and Non-Public Data while providing services during the term of this Agreement. Such security measures shall include and not be limited to the prompt availability to

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and application of security-relevant Software upgrades, patches, service-packs, and hot fixes and be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.

- B. All data obtained by the Contractor in the performance of this Agreement shall become and remain the property of the City.
- C. Unless otherwise stipulated, Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access. This Agreement will specify which party is responsible for encryption and access control of the City Data for the services under Agreement. If the Agreement are silent, then the City is responsible for encryption and access control.
- D. At no time shall any data or processes — that either belong to or are intended for the use of the City or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City.
- E. The Contractor shall not use any Information collected in connection with the services performed under this Agreement for any purpose other than fulfilling those services.

Software-as-a-Service (SaaS).

The Contractor shall safeguard the confidentiality, integrity and availability of City Information and comply with the following conditions:

- A. The Contractor shall implement and maintain appropriate administrative and technical security measures to safeguard against unauthorized access, Data Breach, Exfiltration, disclosure or theft of Personal Data and Non-Public Data while providing services during the term of this Agreement. Such security measures shall include and not be limited to the prompt availability to and application of security-relevant Software upgrades, patches, service-packs, and hot fixes and be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
- B. All data obtained by the Contractor in the performance of this Agreement shall become and remain the property of the City.
- C. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the Service Level Agreement (SLA), or otherwise made a part of this Agreement.
- D. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at Rest and Data in Transit. The City shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this Agreement.
- E. At no time shall any data or processes — that either belong to or are intended for the use of the City or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City.
- F. The Contractor shall not use any Information collected in connection with the services performed under this Agreement for any purpose other than fulfilling those services.

Platform-as-a-Service (PaaS). or **Infrastructure-as-a-Service (IaaS).**

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The Contractor shall safeguard the confidentiality, integrity and availability of City Information within its control and comply with the following conditions:

- A. The Contractor shall implement and maintain appropriate administrative and technical security measures to safeguard against unauthorized access, Data Breach, Exfiltration, disclosure or theft of Personal Data and Non-Public Data while providing services during the term of this Agreement. Such security measures shall include and not be limited to the prompt availability to and application of security-relevant Software upgrades, patches, service-packs, and hot fixes and be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
- B. All data obtained by the Contractor within its control in the performance of this contract shall become and remain the property of the City.
- C. Unless otherwise stipulated, Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access. The SLA or Agreement will specify which party is responsible for encryption and access control of the City Data for the services performed under this Agreement. If the SLA or the Agreement are silent, then the City is responsible for encryption and access control.
- D. Unless otherwise stipulated, it is the City's responsibility to identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified and made a part of this Agreement.
- E. At no time shall any data or processes — which either belong to or are intended for the use of the City or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City.

10. Data Location.

The Contractor shall provide its services to the City and its end users solely from data centers in the U.S. Storage of City Data at Rest shall be located solely in data centers in the U.S. The Contractor shall not allow its employees, contractors, subcontractors, agents and affiliates to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its employees, contractors, subcontractors, and agents and affiliates to access City Data remotely only as required to provide technical support. The Contractor shall provide technical user support on a 24/7/365 basis unless defined otherwise in this Agreement.

11. Security Incident or Data Breach Notification. [Select applicable type of Service – **Remove if not applicable.]**

Software-as-a-Service (SaaS).

The Contractor shall inform the City of any Security Incident or Data Breach.

- A. Incident Response. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in this Agreement. Discussing Security Incidents with the City should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in this Agreement.
- B. Security Incident Reporting Requirements. The Contractor shall report a Security Incident to the

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appropriate City Identified Contact immediately as defined in the SLA.

- C. Breach Reporting Requirements. If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any City content that is subject to applicable Data Breach notification law, the Contractor shall (1) promptly notify the appropriate City Identified Contact within 4 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.
- D. Contents of the breach report. The breach report shall include, at a minimum, the following Information:
- Applicable dates (date of compromise and/or date of discovery).
 - Threat methodology (all known resources used such as Internet Protocol (IP) addresses, domain names, software tools, etc.).
 - An account of what actions the intruder(s) may have taken on the victim system/network, and what Information may have been accessed.
 - A description of the roles and function of the threat-accessed systems.
 - Potential impact on City programs or Information and an initial list of impacted City programs or Information.
 - Contractor actions to support forensic analysis and damage assessment.

Platform-as-a-Service (PaaS)

The Contractor shall inform the City of any Security Incident or Data Breach related to City Data within the possession and control of the Contractor and related to service provided under this Agreement.

- A. Incident Response. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in this Agreement. Discussing Security Incidents with the City should be handled on an urgent as-needed basis, as part of the Contractor's communication and mitigation processes as mutually agreed, defined by law or contained in this Agreement.
- B. Security Incident Reporting Requirements. Unless otherwise stipulated, the Contractor shall immediately report a Security Incident related to its services under this Agreement to the appropriate City Identified Contact as defined in the SLA.
- C. Breach Reporting Requirements. If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any City content that is subject to applicable Data Breach notification law, the Contractor shall (1) promptly notify the appropriate City Identified Contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

Infrastructure-as-a-Service (IaaS)

The Contractor shall inform the City of any Security Incident or Data Breach related to City Data within the possession or control of the Contractor and related to the service provided under this Agreement.

- A. Security Incident Reporting Requirements. Unless otherwise stipulated, the Contractor shall immediately report a Security Incident related to its service under the Agreement to the appropriate City Identified Contact as defined in the SLA.

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- B. Breach Reporting Requirements. If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any City content that is subject to applicable Data Breach notification law, the Contractor shall (1) promptly notify the appropriate City Identified Contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

12. Breach Responsibilities.

This paragraph only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of the Contractor.

- A. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate City Identified Contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a Security Incident.
- B. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate City Identified Contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- C. Unless otherwise stipulated, if a Data Breach is a direct result of the Contractor's breach of its Agreement obligation to encrypt Personal Data or Non-Public Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for Data Breaches in the United States (currently \$244 per record/person - 2017) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this Agreement's limitation of liability.

13. Notification of Legal Requests.

The Contractor shall contact the City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the City's data under this Agreement, or which in any way might reasonably require access to the data of the City. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the City without first notifying the City, unless prohibited by law from providing such notice.

14. Background Checks.

The Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of this Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the City's data and digital content among the Contractor's employees and agents.

15. Access to Security Logs and Reports.

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The Contractor shall provide reports to the City in a format as agreed to by both the Contractor and the City. Reports shall include latency statistics, user access, user access IP address, API calls for the City's account including the source IP address of the API caller, the request parameters and the response elements returned, user access history and security logs for all City Data and digital content related to this Agreement. The reports shall be sufficient to enable the City to perform security analysis, resource change tracking and compliance auditing.

16. Contract Audit.

The City may audit performance under this Agreement to ensure conformance to the Agreement terms. The City may perform this audit or contract with a third party at its discretion and at the City's expense.

17. Change Control and Advance Notice.

The Contractor shall give advance notice to the City of any upgrades (e.g., major upgrades, minor upgrades, system changes, etc.) that may impact hardware/Software requirements, system or application service availability and performance or impact of services provided as part of this Agreement.

18. Security.

The Contractor shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the Contractor. For example: virus checking and port sniffing — the City and the Contractor shall understand each other's roles and responsibilities.

19. Non-disclosure and Separation of Duties.

The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City Data to that which is absolutely necessary to perform job duties.

20. Import and Export of Data.

The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the City to import or export data to/from other Contractors.

21. Subcontractor Disclosure.

The Contractor shall identify all of its strategic business partners related to services provided under this Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

22. Encryption of Data

A. Data at Rest.

The Contractor shall ensure encryption of Personal Data and Non-Public Data within the Contractor's possession or control is consistent with validated cryptography standards as referenced in Federal Information Processing Standard (FIPS) 140 Publication Series.

B. Data in Transit.

The Contractor shall ensure all Personal Data and Non-Public Data is encrypted when transmitted across networks to protect against eavesdropping of network traffic by unauthorized

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users. In cases where source and target endpoint devices are within the same protected subnet, Personal Data and Non-Public Data transmission must still be encrypted due to the potential for high negative impact of a covered Data Breach. The types of transmission may include client-to-server, server-to-server communication, as well as any data transfer between core systems and third-party systems.

- 1) Where an endpoint device is reachable via web interface, web traffic must be transmitted over Secure Sockets Layer (SSL), using only strong security protocols, such as Transport Layer Security (TLS).
- 2) Non-web transmission of Personal Data and Non-Public Data should be encrypted via application-level encryption.
- 3) Where the application database resides outside of the application server, the connection between the database and application should also be encrypted using Federal Information Processing Standard (FIPS) compliant cryptographic algorithms referenced in FIPS Publication 197.
- 4) Where application-level encryption is not available for non-web Personal Data and Non-Public Data traffic, network level encryption such as Internet Protocol Security (IPSec) or SSH tunneling shall be implemented.
- 5) Email is not secure and shall not be used to transmit Personal Data and Non-Public Data.

23. Indemnification.

Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property, and for other liability loss arising from or caused by errors, omissions, negligent or intentional acts of the Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

24. Insurance. CONTRACTOR will maintain the following insurance coverages during the term of this Agreement:

- Commercial General Liability: Bodily Injury and Property Damage Liability with a split of combined single limit providing minimum coverage of \$1,000,000 per occurrence and \$2,000,000 annual aggregate;
- Workers Compensation meeting statutory minimums;
- Automobile Liability: Bodily Injury and Property Damage Liability with a split limit or combined single limit providing minimum coverage of \$1,000,000 per occurrence;
- Cyber Liability including cyber-extortion and ransomware with first and third party coverages providing minimum limits of \$5,000,000 per occurrence and \$5,000,000 annual aggregate.
- Professional Errors & Omissions providing minimum limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- Technology Errors & Omissions Liability providing \$2,000,000 per occurrence and \$2,000,000 annual aggregate.

The City shall be added as a primary and non-contributory additional insured for the liability policies and CONTRACTOR will supply certificates of insurance evidencing such coverage to the City at the time of execution of the contract and upon an annual basis thereafter.

25. Performance Bond.

CONTRACTOR shall furnish a Performance/Maintenance Bond in the amount of 100% of the Contract price. The obligation of such Performance/Maintenance Bond shall be made payable to the City as security for faithful performance of the Contract. The form of such bonds shall be as approved by the City. A current power of attorney for the person signing the bonds as a representative of the Surety shall be attached to the bond. The Performance/Maintenance Bond shall provide for a maintenance period of two (2) years following the Go Live date and acceptance of the Project by the City CIO. Bonds must delete any reference to a notice period or claims period that is less than the five (5) year statute of limitations applicable under Kansas law.

26. Intellectual Property.

Contractor hereby acknowledges and grants to the City a non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

27. Intellectual Property Indemnification.

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the City, and/or any other body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City shall:

- 1) Give the Contractor reasonable written notice of its notification of any claim;
- 2) Allow the Contractor to control the defense and settlement of the claim; and
- 3) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. City Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

- 1) Provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- 2) Replace or modify the product or service so that it becomes non-infringing; or
- 3) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

28. Warranties.

A. General. The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during the implementation, or post-implementation

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phase.

- B. Software. The Contractor warrants that any Software or other products, including the licensed application, delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the Software or other products, including the licensed application, provided under this Agreement will meet the applicable specifications for two (2) years after Acceptance by the City CIO and implementation by the City. If the Software or other products, including the licensed application, fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the City, so that the Software or other products, including the licensed application, meets the applicable specifications. The failure of Contractor to warrant either deliverables or Software is grounds for termination.

29. Contractor Personnel.

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key Contractor personnel shall be:

- [ENTER Contractor's key personnel]

- B. Personnel Changes. The City may request at any time and for any reason the replacement of Contractor's personnel upon written notice delivered to the Contractor. Replacement of any Contractor's personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City reserves the right to require submission of their resumes prior to approval. If the City request any replacement of Contractor's personnel or the number of Contractor's personnel assigned to the Project is reduced for any reason, the Contractor shall, within ten (10) calendar days of the replacement notice or personnel reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to City approval. The City, in its sole discretion, may approve additional time beyond the ten (10) calendar days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel.

The City shall have the right at any time to require that the Contractor remove from interaction with City any Contractor personnel who the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not re-assign personnel to any aspect of this Agreement or future work orders without the City's consent.

30. Status of Contractor.

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

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The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the City.

31. Change Management.

- A. Changes. The Contractor and/or the City may request changes or revisions to the Statement of Work as defined in [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)] in accordance with the "Change Request Process", Subparagraph 29. B. described herein.
- B. Change Request Process. In the event that circumstances warrant a change to accomplish the Statement of Work as defined in [ENTER paragraph number for Statement of Work (e.g. Paragraph 2.)], a Change Request shall be submitted that includes the following:

The name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change.

- C. Change Request Approval.
- 1) City. The City shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) business days of receipt of the Change Request.
 - 2) Contractor. The Contractor shall provide a written decision on the Change Request to the City within a maximum of ten (10) business days of receipt of the Change Request.

The City CIO, upon a Change Request approval, shall formally amend the original Agreement. The Change Request shall then be bound by the Terms and Conditions of the original Agreement.

32. Professional Services Certification.

Contractor certifies that at the time of the issuance of this Agreement, the Contractor does not serve as an expert witness for any litigation against the City, and that it will not serve as an expert witness for any litigation against the City during the term of this Agreement.

33. Default/Breach.

In case of default and/or breach by the Contractor, the City may procure the goods or services from another source and the Contractor shall be responsible for providing to and assisting the new Contractor in transitioning any data in a form acceptable to both parties, leaving any hardware in a manner acceptable to the new Contractor and providing any other Information to the new Contractor to assist in these transition activities. [ENTER associated subparagraph number for Termination Management statement "Cooperate fully in the closeout or transition of any activities to permit

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continuity in the administration of City programs” (e.g. Subparagraph 7. A. 6)] shall otherwise continue to apply to this paragraph.

34. Equitable Remedies.

Contractor acknowledges that its failure to comply with any provision of this Agreement related to confidential Information will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that City may have under applicable law, including, but not limited to, monetary damages.

35. Liability.

Contractor shall be liable for damages arising out of injury to persons, damage to real or personal property or other liability loss before or after Acceptance, delivery, installation and use of the equipment and/or Software application, either at the Contractor's site or the City's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect in the equipment, Software application, or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment and/or Software application (other than alterations performed or caused by Contractor's officers, employees or agents) made by the City or for losses occasioned by the City's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture of, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

- A. EXCEPT FOR DAMAGES ARISING OUT OF (i) CONTRACTOR'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (ii) CONTRACTOR'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (iii) CONTRACTOR'S INDEMNIFICATION OBLIGATIONS SET FORTH IN [ENTER paragraph number for Intellectual Property Indemnification (e.g. PARAGRAPH 25. INTELLECTUAL PROPERTY INDEMNIFICATION.)], BOTH PARTIES AGREE THAT CONTRACTOR'S LIABILITY, IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE 200% OF THE COMPENSATION AMOUNT DESCRIBED IN THIS AGREEMENT FOR ANY LIABILITY ARISING UP TO AND ON THE GO LIVE DATE; CONTRACTOR'S OBLIGATION TO PAY FOR ANY LIABILITY ARISING AFTER THE GO LIVE DATE SHALL NOT EXCEED, IN THE AGGREGATE, TWO TIMES THE AMOUNT OF SUPPORT FEES DESCRIBED AS THE CITY'S OBLIGATION FOR THE ANNUAL SUPPORT TO BE SUPPLIED BY CONTRACTOR UNDER THIS AGREEMENT DURING THE THEN-CURRENT TERM OF ANNUAL SUPPORT. AFTER GO-LIVE, CONTRACTOR'S LIABILITY FOR THE CITY'S LOSS OF REVENUE RELATING TO CONTRACTOR'S OBLIGATIONS IN THE CONTRACT SHALL NOT EXCEED TWO (2) TIMES THE AMOUNT OF SUPPORT FEES ACTUALLY PAID BY THE CITY TO CONTRACTOR IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT CAUSING THE LOSS.
- B. OTHER THAN THE CITY'S LOSS OF REVENUE PROVISION ABOVE, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES. SUBPARAGRAPHS 33. 1) AND 33. 2) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, NEGLIGENCE,

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TORT OR OTHERWISE.

36. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

37. Subcontracting.

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the City. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the City.

38. Release.

The Contractor's acceptance of partial payments of the amount due under this Agreement shall operate as a release of the City, its officers, employees and agents from all liabilities, claims and obligations whatsoever arising from the products and work described in the paid invoice.

The Contractor's acceptance of final payment of the amounts due as invoiced under this Agreement shall operate as a release of the City, its officers, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

39. Confidentiality.

Any confidential information provided to the Contractor by the City or, developed by the Contractor based on Information provided by the City in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the City within thirty (30) calendar days of such termination. Contractor acknowledges that failure to deliver such confidential Information to the City will result in direct, special and incidental damages.

40. Conflict of Interest.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

41. Records and Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City or designated representative. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

42. Amendment.

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

43. Merger, Scope, Order of Precedence.

A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or City or *The City of Wichita is a leading-edge organization serving a dynamic and inclusive community.*

commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

- B. Incorporated by Reference. This Agreement incorporates all terms and conditions of the City's solicitation and the Contractor's response to such document(s).
- C. Order of Precedence. In case of conflict in language among the documents comprising this Agreement, the language in this Information Technology Agreement shall control, followed by, in descending order of priority, the City's Request for Proposal, [Determine order and insert any additional Appendices, Exhibits, etc. (e.g. Exhibit C, Exhibit B, Exhibit A)].

44. Non-Discrimination.

The Contractor shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements incorporated herein by reference.

45. Workers Compensation.

The Contractor agrees to comply with all federal, state, and city laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

46. Applicable Law and Venue.

This Agreement shall be subject to, governed by, and construed according to the laws of the City and the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside only in courts located in Sedgwick County, Kansas.

47. Waiver.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

48. Headings.

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, paragraphs and subparagraphs contained herein, refer only to provisions, paragraphs and subparagraphs of this Agreement unless otherwise expressly stated.

48. Survival.

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, Indemnification, Equitable Remedies, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

49. Calculation of Time.

Any time period herein calculated by reference to "days" means calendar days, unless specifically stated otherwise; provided, however, that if the last day for a given act falls on a Saturday, Sunday,

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or a holiday as observed by the City, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

50. Force Majeure.

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

51. Notices.

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by overnight carrier or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication or e-mail that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

To the City: City of Wichita
 455 N Main
 Wichita, KS 67202
 [ENTER name of individual for the City, including contact number or email
 address, responsible for receiving communications as defined in this
 paragraph]

To the Contractor: [ENTER Company name, address, and name of individual for the
 Contractor, including contact number or email, responsible for receiving
 communications as defined in this paragraph]

Any change to the Notice individual or the address, shall be effective only in writing.

52. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding Agreement and that the Contractor agrees to be bound by the provisions thereof.

53. No Arbitration.

The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Agreement by arbitration. Any reference to arbitration in prior discussions or documents is deemed void.

54. Third Party Exclusion.

This Agreement is intended solely for the benefit of City and Contractor and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. No third party may sue for damages based on the terms or performance of this Agreement.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:

CITY OF WICHITA, KANSAS

Paul Leeker
City Clerk

Lily Wu
Mayor

APPROVED AS TO FORM:

COMPANY NAME, (VENDOR)

Jennifer Magaña
City Attorney & Director of Law

Signature

Name

Title

X. ATTACHMENT B – CITY DEPARTMENT FACILITY ADDRESS LISTING

Attachment B – Functional and Technical Requirements Matrix

A Functional and Technical Requirements Matrix is a method used to objectively evaluate requirements criteria. These criteria are prioritized before the evaluation is made.

Functional and Technical Requirements are assigned to one of 2 categories – required or desirable. Required/desired criteria are requirements that absolutely must be satisfied for an option to be considered feasible and can use a “go/no-go” criteria. Desirable criteria are requirements that should be met to some degree as reflected by some benefit. Satisfaction of these criteria is highly desirable but some criteria may be sacrificed to others if the result allows a net benefit.

Proposers Instructions:

Attachment B contains the Functional and Technical requirements criteria matrix to be completed by the Proposer.

Complete Attachment B’s Criteria Matrix Worksheet (separate file titled: Attachment B Functional & Technical Requirements Criteria Matrix) by indicating if current state of proposed product supports functionality described in the section by placing an “X” in the appropriate column according to the following definitions. Do not modify the spreadsheet in any way.

Meets/Standard Functionality	Should be selected IF: Requirements are met (or if software component - out of the box. No configuration / customization to the product is needed.)
Configurable	Requirements can be met with configuration. No customization needed. Example: Field names can change and values in drop down boxes added / deleted.
Custom Development	Requirement met through custom development (modification or additions to base code).
3rd Party	Requirements cannot be met within the system and will require another vendor's application / system to meet the requirements.
Planned for Future Release	This functionality will be part of a planned update to the product. If this is indicated, then the Proposer must place the version and anticipated release date in the comments section.
Not available	This functionality/request is not supported and there is not a definitive plan to include in the future.

Attachment may be found on the City Procurement Portal online located at wichita.gov/procurementportal.

XI. ATTACHMENT C – FILE LAYOUT REQUIREMENT

Attachment C – File Layout Requirement

Attachment may be found on the City Procurement Portal online located at wichita.gov/procurementportal.

XII. ATTACHMENT D – CITY OF WICHITA ACTUAL USAGE REPORT

Attachment D – City of Wichita Actual Usage Report

Attachment may be found on the City Procurement Portal online located at wichita.gov/procurementportal.

XIII. ATTACHMENT E – OFFICE SUPPLIES CORE LIST OFFERING & PRICING SHEET

Attachment E – Office Supplies Core List Offering & Pricing Sheet

Attachment may be found on the City Procurement Portal online located at wichita.gov/procurementportal.

XIV. ATTACHMENT F – CITY DEPARTMENT FACILITY ADDRESS LISTING

Attachment F – City Department Facility Address Listing

Attachment may be found on the City Procurement Portal online located at wichita.gov/procurementportal.