

**CITY OF IOWA CITY CONTRACT
FOR LAND DEVELOPMENT AND PERMITTING SYSTEM SOFTWARE & SERVICES**

THIS AGREEMENT, made and entered into this _____ day of _____, _____ by and between the City of Iowa City, a municipal corporation, hereinafter referred to as the City, and _____ (Address: _____), a corporation of the State of _____, authorized to do business in the State of Iowa, hereinafter referred to as the Vendor.

Vendor Legal Name:
Name of Representative:
Vendor Address:
Vendor Phone:
Vendor Fax:
Vendor e-mail:

WHEREAS, the City's Department of Neighborhood Services uses land development and permitting software to process parcel data and keep records. This includes regulating land development activities such as site plan review; permit issuance; inspections; issuance of certificates of occupancy; and enforcement of the City Code; and

WHEREAS, the public also uses this software through an online web portal; and

WHEREAS, the City seeks new software and services for a land development, permitting, and licensing software system to replace its current system; and

WHEREAS, the City issued a Request for Proposal to evaluate potential suppliers of the necessary software and services associated therewith; and

WHEREAS, the City selected _____ based upon and evaluation of its qualifications, experience, and Proposal; and

WHEREAS, the City has negotiated this Contract with _____ for the supply; installation; implementation; and maintenance and support of land development, permitting, and licensing software, and training services associated therewith.

NOW, THEREFORE, it is agreed by and between the parties hereto that the City does now contract with Vendor to provide the goods and services as set forth herein.

1. Term of Contract

Initial Term: This Contract shall extend throughout development, installation, testing and delivery of the software system, until the City has completed acceptance of the system. Following the City's acceptance of the system, the initial licensing, maintenance, and support of the system shall extend for a term of five years.

Renewals: The City may elect to renew this Contract for licensing, maintenance and support for two (2) additional five (5) year terms upon expiration of the initial term. Beginning in year sixteen (16), the City may renew the Contract by additional five (5) year terms or one (1) year terms. Renewal of the Contract after the initial term is at the discretion of the City.

2. System Acceptance

The City shall have 60 days following the “go live” date for final acceptance of the system. During this time, the system must perform without major interruption of services and in compliance with all representations made in Vendor’s proposal. Failure to perform during this period may result in cancellation of the Contract. The City may, in its discretion, elect to extend the acceptance period. In the event of dispute or discrepancy as to the functionality of any product or service, the City’s decision shall prevail. The City agrees to pay only for authorized orders received up to the date of termination. If the Contract is terminated within the acceptance period, the City reserves the option to award the contract to the next proposer by mutual agreement with such proposer. A final payment equal to 25% of the system cost will be withheld until final system acceptance. The warranty period will not begin until system acceptance. **Acceptance will be in writing from the Purchasing Division.**

3. Rates and Pricing

Pricing shall be fixed and firm throughout the Initial Term of the Contract. Vendor may submit a written request for a price increase at the end of the initial Contract term. The written request shall be made at least 45 days in advance of the end of the initial Contract term. Thereafter, written request for price increases shall only be considered upon the end of the renewed contract term, and shall be made in writing at least 45 days prior to the end of the term.

Price increase requests must:

- Be no greater than the total of changes to the CPI-All Urban Consumers, Midwest Region, All Items, 1982-84 Base, or other pricing index appropriate to the particular product herein
 - Not produce a higher profit margin than that on the original contract
 - Clearly identify the items impacted by the increase
 - Be accompanied by documentation acceptable to the City sufficient to warrant the increase
 - Remain firm for a minimum of 365 days
- a. Price increase requests will be considered by the City and may be accepted or rejected. Failure to submit a price increase request at least 45 days prior to end of the Contract term shall result in a continuation of all existing pricing on the Contract until the next contract term. The decision to accept any price increase will be at the sole discretion of the City.
 - b. The City may exempt these requirements for extraordinary conditions that could not have been known by either party at the time of proposal or for other circumstances beyond the control of both parties, in the opinion of the City.
 - c. Requests that reduce pricing charged to the City may be delivered to the City Purchasing Buyer at any time during the contract term. Such price reductions should use the same pricing structure as the original. The City may likewise initiate a request to the Vendor for price reductions, subject to mutual agreement of the Vendor.

The City reserves the right to accept or reject future price increases, to negotiate more favorable terms, or to terminate without cost, the future performance of the Contract.

4. Survivorship

All purchase transactions and deliverables executed pursuant to the authority of this

Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extensions thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall survive the termination of this Contract. In addition, the terms of the sections titled Warranties, Publicity, Section Headings, Incorporated Documents and Order of Precedence, Patent and Copyright Indemnification, Insurance, Indemnification, and Confidentiality shall survive the termination of this Contract.

5. Scope of Services

Vendor shall provide the products, services and tasks as described in the Contract attachments. (Configuration Price Sheet and Annual Maintenance Agreement)

6. Contract Alterations

The City reserves the right to make changes to the goods and/or services to be provided which are within the scope of this Contract. No assignment, alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and agreed to by both the City and the Vendor. The Vendor shall not commence any additional work or change the scope of the goods and/or services provided until authorized in writing by the City. Vendor shall make no claim for additional compensation in the absence of a prior written approval and amendment of this Contract executed by both the Vendor and the City. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract by the Purchasing Division.

7. Time of Completion

Vendor shall complete the following phases of installation in accordance with the schedule shown.

Installation	(Date)
Data Conversion	(Date)
Testing	(Date)
Training	(Date)
Cutover	(Date)

8. Documentation

Unless specified otherwise in Contract attachments, Vendor will provide two (2) complete sets of documentations for each Software/Hardware order or System delivered, including technical and maintenance information, and, where applicable, installation information. Vendor shall also provide two (2) complete sets of documentations for each updated version of Software that Vendor provides. Vendor shall provide the documentation on or before the date Vendor delivers its respective Software. There shall be no additional charge for this documentation or the updates, in whatever form provided. Vendor's Software documentation shall be comprehensive, well structured, and indexed for each reference. The City may excerpt, summarize, or otherwise reproduce the documentation for distribution to users of the Land Development, Permit and Licensing Software System.

The City reserves the right to withhold payment for a deliverable, modification or

enhancement until it receives all documentation associated with the same.

9. Compensation

Vendor shall provide the products, services, and tasks in the above-described Scope of Services, with said total fee not to exceed \$_____, inclusive of all costs, fees, and any other direct charges.

10. Payment Procedures

10.1 Payment Terms. Payment may be made only after inspection and acceptance by the using department. Payment of balances shall be made only after approval and final acceptance by the City. The parties agree to the following payment schedule:

Installation/configuration	25%
Data conversion and training complete (go live)	50%
Final Acceptance	25%

10.2 Invoicing. Following the City's approval and acceptance of each payment term, the City shall make payment within thirty (30) calendar days from receipt of Vendor's itemized invoice. Vendor's invoice must include the proposal number, department name, dollar amount, and any other pertinent information. Vendor shall submit the invoice to:

Purchasing Division
City of Iowa City
410 East Washington St.
Iowa City, Iowa 52240

10.3 Withholding Payment. The City agrees to tender the Vendor all fees in a timely manner. However, if the City believes in good faith that some portion of work has not been completed satisfactorily, the City may require Vendor to correct such work prior to payment. In such event, the City will provide to Vendor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Vendor does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correcting or remedying the work not properly completed.

10.4 Taxes. The City of Iowa City is exempt from all Federal, State of Iowa and other states' taxes on the purchase of commodities and services used by the City of Iowa City within the State of Iowa. The Purchasing Division shall provide tax exemption certification to out of state suppliers as required. Out of state taxes imposed on purchases of commodities and/or services which are used within another state are applicable and subject to payment.

Once the City has received and approved the invoice, the City will provide payment within thirty (30) days.

The City shall not be obligated to pay any other compensation, fees, charges, prices or costs, nor shall Vendor charge any additional

compensation.

11. Timely Completion

The City has an immediate need to implement the System and/or Software and equipment for the management and operation of the City. Therefore, time is of the essence in all matters relating to this Contract. Neither the provisions of this subsection nor their application or implementation shall limit the City's right to pursue any other remedy available to it in law or at equity under this Contract.

12. License for Use

As part of the price of the System, the Vendor hereby grants to the City, and the City accepts from the Vendor, a non-exclusive, fully paid, royalty free, perpetual license to unlimited use of the Software and related documentation for use on the System acquired by the City under this Contract.

13. Software Upgrades and Enhancements and Optional Modules

Vendor shall, throughout the Initial Term and any Renewal Term:

- a. Supply at no additional cost updated versions of the Software to operate on upgraded versions of operating systems, upgraded versions of firmware, or upgraded versions of hardware;
- b. Supply at no additional cost updated versions of the Software that encompass improvements, extensions, maintenance updates, error corrections, or other changes that are logical improvements or extensions of the original Software supplied to City; and
- c. Supply at no additional cost interface modules that are developed by Vendor for interfacing the Software to other Software products.

14. Warranties

14.1 Warranty of the System

Commencing on the date that the City provides final acceptance of the System, and extending for a period of one (1) year, Vendor warrants that the Software furnished hereunder shall be free from programming errors and that the Software and hardware shall be free from defects in workmanship and materials and shall operate in conformity with the performance capabilities, functions and other descriptions and standards applicable thereto and as set forth in this Contract including but not limited to the City's Request for Proposal and Vendor's Proposal; that the services shall be performed in a timely and professional manner by qualified professional personnel; and that the services, Software and Hardware shall conform to the standards generally observed in the industry for similar services, Software and hardware. If Vendor is not the original software or hardware manufacturer, Vendor shall obtain in writing the manufacturer's consent to pass through all software and hardware warranties for the City's benefit. During this warranty period, Vendor shall replace or repair any defect appearing in the software or hardware, or deficiency in service provided at no additional cost to the City.

14.2 Warranty Against Planned Obsolescence

The Vendor warrants that the products proposed to and acquired by the City under this Contract are new and of current manufacture, and that it has no current plans for

announcing a replacement line that would be marketed by Vendor as a replacement for any of the products provided to the City under this Contract and would result in reduced support for the product line within which the System furnished to the City is contained. The Vendor further warrants that, in the event that a major change in hardware, software, or operating system occurs that alters the design architecture of the System and makes the current design architecture obsolete within three (3) years after full execution of this Contract, and if the City continues its annual maintenance Contract with the Vendor, the Vendor shall provide the City with replacement hardware, software, or operating system(s) that continues the full functionality of the systems, at no extra cost to the City.

14.3 No Surreptitious Code Warranty

The Vendor warrants to the City that no copy of the licensed software provided to the City contains or will contain any self-help code or any unauthorized code as defined below. This warranty is referred to in this Contract as the “No Surreptitious Code Warranty.”

As used in this Contract, “Self-help Code” means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the Software. The term “Self-help Code” does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee’s computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, “Unauthorized Code” means any “virus,” “Trojan horse,” “worm” or other Software routines or Equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or data or to perform any other actions. The term Unauthorized Code does not include Self-help Code.

The Vendor shall defend City against any claim, and indemnify the City against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

14.4 Title Warranty and Warranty Against Infringement

The Vendor warrants and represents that the hardware and Software provided under this Contract is the sole and exclusive property of the Vendor or that the Vendor is authorized to provide full use of the hardware and Software to the City as provided herein. The Vendor warrants that it has full power and authority to grant the rights granted by this Contract to the City without the consent of any other person or entity.

In the event of any claim by a third party against the City for software used in the United States asserting a patent, copyright, trade secret, or proprietary right violation involving the System acquired by the City hereunder or any portion thereof, Vendor shall defend, at its expense, and shall indemnify the City against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful; provided, however, that Vendor is notified by the City in writing within a reasonable time after the City first receives written notice of any such claim, action, or allegation of infringement. In the event a final injunction or order is obtained against the City’s full use of either the System or any portion thereof as a result, as determined by the City, of any such claim,

suit or proceeding, and if no further appeal of such ruling is practicable, Vendor shall, at Vendor's expense:

- a. procure for the City the right to continue full use of the System; or
- b. replace or modify the same so that it becomes non-infringing (which modification or replacement shall not affect the obligation to ensure the System conforms with applicable Statement of Work); or
- c. if the product was purchased and the actions described in item (a) or (b) of Section 15.4, are not practicable, re-purchase the product from the City at a price mutually agreed upon, which shall relate to the value and utility of the product to the City; or
- d. if the System was leased, licensed, purchased or rented, and the actions described in item (a), (b), or (c) of Section 14.4, are not practicable as determined by the City, remove such System from the City's site(s) and pay the City promptly after notification for all direct and consequential damages suffered by the City as a result of the loss of the infringing product and any other continued utility of which to the City is adversely affected by the removal of the infringing product, and hold the City harmless from any further liability therefore under any applicable Order, Settlement, or other Contract.

In no event shall the City be liable to Vendor for any lease, rental, or maintenance payments after the date, if any, that the City is no longer legally permitted to use the System because of such actual or claimed infringement. In the event removal or replacement of the System is required pursuant to this paragraph, Vendor shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the City's premises to their condition immediately prior to the installation of the System as is reasonably possible.

No settlement that prevents the City from continuing to use the Software, other products or Software documentation as provided in this Contract shall be made without the City's prior written consent. In all events, the City shall have the right to participate at its own expense in the defense of any such suit or proceeding through counsel of its own choosing.

The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Contract.

14.5 No Liens

The Vendor warrants that the Software and Equipment is the sole and exclusive property of the Vendor and that the Vendor is authorized to provide full use of the Software to the City as provided herein and that such Software is not subject to any lien, claim or encumbrance inconsistent with any of the City's rights under this Contract and that the City is entitled to and shall be able to enjoy quiet possession and use of the Software and Equipment without interruption by Vendor or any other person making a claim under or through the Vendor or by right of paramount title.

14.6 Maintenance Services Warranty

The Vendor warrants that, in performing the services under the Maintenance Agreement appended as Appendix [], a future Appendix, the Vendor shall strictly comply with the descriptions and representations as to the services, including performance capabilities,

accuracy, completeness, characteristics, Statement of Work, configurations, standards, function and requirements, which appear in this Contract and in the Vendor's response to the City's Request for Proposal. Its products shall be uniform in appearance and clean and presentable in accordance with generally applicable standards in the industry. Errors or omissions committed by the Vendor in the course of providing Services shall be remedied by the Vendor at its own expense.

14.7 Equipment Warranty

The Vendor warrants and represents that the equipment provided to meet the requirements of the Statement of Work shall be free from all defects, shall be in good operating order, and shall operate in conformity with the descriptions and standards as set forth in the Vendor's Proposal and the City's RFP for a period of one (1) year from and after the final acceptance date. During the warranty period, Vendor shall promptly, without additional charge, repair or replace the equipment or any part thereof that fails to function according to the Vendor's Statement of Work or the Statement of Work of the manufacturer thereof.

14.8 Merchantability and Fitness Warranty

Vendor represents and warrants that the Software, other products and Software Documentation will be merchantable and will be fit for the particular purposes established in the City's RFP and the Vendor's response to the City's RFP.

14.9 Warrant of Compliance with Applicable Law

The Vendor warrants that the System, and the manufacture and production thereof, are in compliance with any and all applicable laws, rules, and regulations.

14.10 Date Warranty

The Vendor warrants that all Software provided under this contract: (a) does not have a life expectancy limited by date or time format; (b) will correctly record, store, process, present calendar dates; (c) will lose no functionality, data integrity, or performance with respect to any date; and (d) will be interoperable with other software used by City that may deliver date records from the Software, or interact with date records of the Software ("Date Warranty"). In the event a Date Warranty problem is reported to Vendor by City and remains unresolved after three calendar days, at City's discretion, the Vendor shall send, at Vendor's sole expense, at least one qualified and knowledgeable representative to City's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on City's premises. This Date Warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Vendor shall indemnify and hold harmless the City from and against any and all harm, injury, damages, costs, and expenses incurred by City arising out of said Breach.

14.11 Physical Media Warranty

Vendor warrants to City that each licensed copy of Software provided by Vendor is and will be free from physical defects in the media that tangibly embodies the copy (the "Physical Media Warranty."). The Physical Media Warranty does not apply to defects discovered more than thirty (30) calendar day after the date of Acceptance of the Software copy by the City. Vendor shall replace, at Vendor's expense, including shipping and handling costs, any Software copy provided by Vendor that does not comply with this Warranty.

14.12 PCI Compliance Warranty

Vendor represents and warrants that for the life of the Contract, the software and services used for processing transactions shall be compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). Vendor agrees to indemnify and hold the City for, from and against any and all claims, causes of action, suits, judgments, assessments, costs (including reasonable attorneys' fees) and expenses arising out of or relating to any loss of City customer credit card or identity information managed, retained or maintained by Vendor, including but not limited to fraudulent or unapproved use of such credit card or identity information.

14.13 Survival of Warranties and Representations

The representations and warranties of the Vendor made pursuant to this Contract shall survive the delivery of the System, the payment of the purchase price, and the expiration or earlier termination of this Contract.

15. Reauthorization Code Required

Vendor's Software shall not require a reauthorization code in order for the Software supplied through this Contract to remain functional upon City's movement of the Software to another computer system.

16. Escrowing of Source Language of Licensed Software

16.1 Source Code Escrow Package Definition. The term "Source Code Escrow Package" shall mean:

- a. A complete copy in machine-readable form of the source code and executable code of the licensed Software;
- b. A complete copy of any existing design documentation and user documentation and/or
- c. Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.
- d. Delivery of Source Code into Escrow. Vendor shall deliver a Source Code Escrow Package to Escrow Agent, provided that Vendor, City and Escrow Agent shall first enter into a supplementary escrow agreement. Vendor and City shall use best efforts to enter into such an Escrow Agreement as soon as possible after the Effective Date of this Contract, but not later than 30 days after the Effective Date of this Contract.

16.2 Delivery of New Source Code into Escrow. If during the term of this Contract, term of license, or term of maintenance and support, Vendor provides City with a maintenance release or upgrade version of the licensed Software, Vendor shall within ten (10) Business Days deposit with Escrow Agent a Source Code Escrow Package for the maintenance release or upgrade version and give city notice of such delivery.

16.3. Verification of Source Code Escrow Package. At its option and expense, City may request that the completeness and accuracy of any Source Code Escrow Package be verified.

- a. Such verification may be requested once per Source Code Escrow Package.
- b. Such verification will be conducted by Escrow Agent, or upon at least ten (10) Business Days' prior notice to the Vendor, by another party ("verifier") acceptable to Vendor, after full disclosure to Vendor of information reasonably requested by Vendor about Verifier.
- c. Prior to conducting the verification, Verifier shall first execute a confidentiality agreement prepared by Vendor that precludes Verifier from disclosing any information to City about the Source Code Escrow Package other than whether the Source Code Escrow Package was found to be complete and accurate.
- d. Unless otherwise agreed at the time by Vendor and City, verification will be performed on-site at Vendor's premises, utilizing Vendor's equipment and software, at a time reasonably acceptable to Vendor. Vendor shall make technical and support personnel available as reasonably necessary for the verification. At its discretion, Vendor may designate a representative to accompany the Source Code Escrow Package at all times, and to be present at the verification. Verifier will be City's sole representative at the verification.
- e. Verifier is solely responsible for the completeness and accuracy of the verification. Neither the Escrow Agent, if different from the Verifier, nor Vendor shall have any responsibility or liability to City for any incompleteness or inaccuracy of any verification.

16.4 Escrow Fees. All fees and expenses charged by Escrow Agent will be borne by Vendor.

16.5 Release Events for Source Code Escrow Packages. The Source Code Escrow Package may be released from escrow to City, temporarily or permanently, solely upon the occurrence of one or more of the following "Escrow Release Events":

- a. Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for business or assets, or becomes subject to any proceeding under any bankruptcy or solvency law, whether domestic or foreign;
- b. Vendor has wound up or liquidated its business voluntarily or otherwise and City has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- c. Vendor has wound up or liquidated its business voluntarily or otherwise and City has compelling reasons to believe that such events will cause Vendor to fail to meet its warranties and maintenance obligations in the foreseeable future; or
- d. Vendor has voluntarily or otherwise discontinued support of the Software or fails to support the Software in accordance with its warranties and maintenance obligations.

16.6 Release Event Procedures. If City desires to obtain the Source Code Escrow Package from Escrow Agent:

- a. City shall comply with the procedures set forth in the Escrow Agreement to document the occurrence of the Release Event;
- b. City shall maintain all materials and information comprising the Source Code Escrow Package in confidence in accordance with the Contract section titled Vendor's Proprietary Information;
- c. If release is temporary, City shall promptly return all released materials to Vendor when the circumstances leading to the release are no longer in effect; and
- d. City shall promptly, fully, and completely respond to any and all requests for

information from Vendor concerning City's use or contemplated use of the Source Code Escrow Package.

17. Title to Equipment

Upon successful completion of Acceptance Testing and receipt of the City's Acceptance, Vendor shall convey to City good title to the Equipment free and clear of all liens, pledges, mortgages, encumbrances, or other security interests. Transfer of title to the Equipment shall include an irrevocable, fully paid-up, perpetual license to use the internal code (embedded software) in the Equipment. If City subsequently transfers title to the Equipment to another entity, City shall have the right to transfer the license to use the internal code with the transfer of Equipment title. A subsequent transfer of this software license shall be at no additional cost or charge to either City or City's transfer.

18. Ownership of Deliverables

Except for the licensed System Software and its related documentation, all data and work products produced under this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. 101 et seq, and shall be owned by the City.

19. Contract Notices, Deliverable Materials and Invoices Delivery

Official Contract notices shall be delivered to the following addresses (or such other address (es) as either party may designate in writing):

If delivered by the U.S. Postal Service, it must be addressed to:

City of Iowa City Purchasing Division
410 E. Washington Street
Iowa City, IA 52240

20. Representations

Vendor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.

21. Inspection

Work shall be subject, at all times, to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve Vendor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Vendor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

22. Assignment and Subcontracting

Neither party shall assign or subcontract any of its obligations under this Contract without mutual written consent, which shall not be granted or withheld without reasonable cause. Any subcontract made by Vendor shall incorporate by reference all the terms of this Contract. Vendor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Vendor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

23. General Legal Requirements

- a. General Requirement: Vendor, at no expense to the City, shall comply with all applicable laws of the United States and the State of Iowa and the ordinances of the City. Without limiting the generality of this paragraph, the Vendor shall specifically comply with the following requirements of this section.
- b. Licenses and Similar Authorizations: Vendor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- c. Performance Standard. All duties by Vendor or designees shall be performed in a manner consistent with accepted practices for other similar work.

24. Indemnification

Vendor shall defend, indemnify, and save City harmless from and against all claims, including reasonable attorneys' fees and court costs resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful, or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees or agents. Vendor's obligation to defend, indemnify, and save City harmless shall not be eliminated or reduced by any alleged concurrent City negligence.

25. Bonds and Insurance

Insurance Requirements:

- a. Certificate of Insurance; Cancellation or Modification
 1. Before commencing work, the Vendor shall submit to the City for approval of a Certificate of Insurance meeting all requirements specified herein, to be in effect for the full contract period.
 2. The Vendor shall notify the City in writing at least thirty (30) calendar days prior to any change or cancellation of said policy or policies.
 3. Cancellation or modification of said policy or policies shall be considered just cause for the City of Iowa City to immediately cancel the contract and/or to halt on the contract, and to withhold payment for any work performed on the contract.
 4. The policy shall be primary in payment, not excess or contingent, regardless of any other coverage available to the City.
 5. The City of Iowa City shall be included as an additional insured.
 6. Project proposal number and project title shall be included as the description on the certificate of insurance.
 7. The limits of liability specified herein are minimum limits of liability only and shall not be deemed to limit the liability of Vendor or any Vendor insurer except as respects the stated limit of liability of each policy.

b. Minimum Coverage

Any policy or policies of insurance purchased by the Contractor to satisfy his/her responsibilities under this contract shall include contractual liability coverage, and shall be in the following type and minimum amounts:

Insurance Requirements		
Informal Project Specs: Class I (under \$1 Million)		
Type of Coverage	Each Occurrence	Aggregate
a. Comprehensive General Liability		
(1) Bodily Injury & Property Damage	\$500,000	\$1,000,000
b. Automobile Liability	Combined Single Limit	
(1) Bodily Injury & Property Damage	\$500,000	
c. Worker's Compensation Insurance as required by Chapter 85, Code of Iowa.		
d. Errors & Omissions	\$500,000	

The City requires that the Contractor's Insurance carrier be "A" rated or better by A.M. Best.

Performance Bond:

Vendor shall furnish a bond in the amount of one hundred percent (100%) of the contract price, said bond to be issued by a responsible surety approved by the City and shall guarantee the prompt payments of all materials, deliverables, and labor and protect and save harmless the City from claims and damages of any kind caused by the operation of the contract, and shall also guarantee the maintenance of the software for one year following its completion and acceptance by the City. A letter of Irrevocable Credit from a responsible lending agency approved by the City, for the same guarantee(s) as noted above, may be submitted for approval. The City reserves the right to accept or reject this form of guarantee.

26. Independent Contractor

The relationship of Vendor to the City by reason of this Contract shall be that of an independent contractor. This Contract does not authorize Vendor to act as the agent or representative of the City for any purpose whatsoever. Vendor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

It is the intention and understanding of the Parties that Vendor shall be an independent contractor and that the City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Vendor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Vendor shall not be deemed to convert this Contract to any employment contract. It is recognized that Vendor may or will be performing professional Work during the term for other parties and that the City is not the exclusive user of the work that Vendor will provide.

27. No Conflict of Interest

Upon signing this agreement, Vendor acknowledges that Iowa Code § 362.5 prohibits a City officer or employee from having an interest in a contract with the City, and certifies that no employee or officer of the City, which includes members of the City Council and City boards and commissions, has an interest, either direct or indirect, in this contract, that does not fall within the exceptions to said statutory provision enumerated in Section 362.5.

28. Confidentiality

1. Vendor understands that any records (including but not limited to proposal submittals, the Contract, and any other contract materials) it submits to the City, or that are used by the City even if the Vendor possesses the records, are public records under Iowa Code Chapter 22. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. Vendor understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

2. If the City receives a public disclosure request, the City will not assert an exemption from disclosure on behalf of the Vendor. For materials that the Vendor has properly marked, the City may notify the Vendor of the request and postpone disclosure for ten business days to allow the Vendor to file a lawsuit seeking an injunction preventing the release of documents. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Vendor obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Vendor's discretionary decision whether to file the lawsuit.

3. In order to request that material not be disclosed until receipt of notification of a public disclosure request, Vendor must identify the specific materials and citations very clearly on the City Vendor Questionnaire that it believes are exempt from disclosure. The City will not withhold material for notification if the Contractor simply marked confidential on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited on the Vendor Questionnaire will be temporarily withheld until the City provides notification of a public disclosure request.

29. Publicity

No news release, advertisement, promotional material, tour, or demonstration related to the City's purchase or use of the Vendor's product or any work performed pursuant to this Contract shall be produced, distributed or take place without the prior, specific approval of the City

30. Default

The Contract may be cancelled or annulled by the City in whole or in part by written notice of default to Vendor upon non-performance, violation of contract terms, delivery failure, bankruptcy or insolvency, or the making of an assignment for the benefit of creditors. The City reserves the right to grant Contractor a specified cure period during which to cure or remedy the default, which cure period shall be included in the written notice of default. If default is not cured within the specified time, City reserves the right, but is not obligated to, extend the cure period or City may deem the Contract terminated without further notice. In either event, the defaulting Contractor (or his/her surety) shall be liable to the City for cost to the City in excess of the defaulted contract price. Lack of knowledge by the Contractor will in no way be a cause for relief from responsibility.

If the Contract is terminated, an award may then be made to the next qualified Proposer; or when time is of the essence, services may be contracted in accordance with Emergency procedures.

31. Delivery Failures

Failure of Vendor to provide commodities and/or service within the time specified, unless extended in writing by the City, or failure to replace rejected commodities and/or service when so directed by the City shall constitute delivery failure. When such failure occurs, the City reserves the right to terminate or adjust the contract, whichever is in the best interest of the City. In either event, the City may purchase in the open market commodities and/or service of comparable worth to replace the articles of service rejected or not delivered. On all such purchases, the Vendor shall reimburse the City, within a reasonable time specified by the City, for any expense incurred in excess of contract prices, or the City may deduct such amount from monies owed the Contractor. If the contract is not terminated, such purchases shall be deducted from contract quantities. The City reserves the right to accept commodities and/or service delivered which do not meet specifications or are substandard in quality, subject to an adjustment in price to be determined by the City. Acceptance will be at the sole discretion of the City.

32. Force Majeure

The Vendor shall not be liable in damages for delivery failure when such failure is the result of fire, flood, strike, and act of God, act of government, act of an alien enemy or any other circumstances which, in the City's opinion, is beyond the control of the Contractor. Under such circumstances, however, the City may at its discretion terminate the contract.

33. Section Headings, Incorporated Documents and Order of Precedence

- a. The headings used herein are inserted for convenience only and do not define or limit the contents.
- b. No verbal agreement or conversation between any officer, agent, associate or employee of The City and any officer, agency, employee or associate of the Vendor prior to the execution of this Contract shall affect or modify any of the terms or obligations contained in this Contract.
- c. The following documents are incorporated. Where the document is ambiguous, or there is conflict or gap between or among these documents, the controlling document will be resolved in the following order of precedence (first listed being the precedent):
 - i. Applicable federal, state and local statutes, laws and regulations;
 - ii. This Contract
 - iii. All Attachments to this Contract, including any Pricing, Management, and Technical Specification Agreements
 - iv. Licensing and Maintenance Agreements
 - v. RFP issued by the City
 - vi. Vendor Proposal Response

- vii. City Purchase Order documents issued, if any; and
- viii. Vendor or manufacturer publications or written materials Vendor made available to City and used to affect the sale.

34. Entire Agreement

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. No changes to provisions, price, quality, or other provisions of this Contract will be effective without the written consent of both parties.

35. Severability

If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

36. Miscellaneous Provisions

36.1 Binding Contract: This Contract shall not be binding until signed by both parties. The provisions, covenants and conditions in this Contract shall bind the parties, their legal heirs, representatives, successors, and assigns.

36.2 This Contract shall be interpreted and enforced in accordance with the laws of the State of Iowa. Any legal proceeding instituted with respect to this Contract shall be brought in a court of competent jurisdiction in Johnson County, Iowa. The parties hereto hereby submit to personal jurisdiction therein and irrevocably waive any objection as to venue therein, including any argument that such proceeding has been brought in an inconvenient forum.

36.3 Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.

36.4 Waiver: No term or condition or breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver of the breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither acceptance by The City of Vendor performance nor payment to Vendor for any portion of Work shall constitute a waiver by The City of the breach or default of any term or condition unless expressly agreed to by The City in writing.

36.5 Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.

36.6 Attorneys' Fees: Subject to the indemnification provisions set forth in this Contract, if any action or suit is brought with respect to a matter or matters covered by this Contract, each party shall be responsible for all its own costs and expenses incident to such proceedings, including reasonable attorneys' fees.

36.7 Authority: Each party represents that it has full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party

has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Contract, understands it, and shall be bound by it.

36.8 Change in Laws: In the event of a change in law that frustrates the goals of the City relative to this contract, the City will be entitled to terminate the contract upon written notification to the vendor without cost or penalty to the City.

36.9 Availability of funds: This Contract is valid only to the extent of appropriations available to it. The City's extended obligation on this contract is contingent upon actual appropriation for the following fiscal year.

36.10 Non-discrimination. The Vendor shall not commit any of the following employment practices and agrees to prohibit the following practices in any subcontracts.

1. To discharge or refuse to hire any individual because of their race, color, religion, sex, national origin, disability, age, marital status, gender identity, or sexual orientation.
2. To discriminate against any individual in terms, conditions, or privileges of employment because of their race, color, religion, sex, national origin, disability, age, marital status, gender identity, or sexual orientation.

36.11 Wage Theft. If the City becomes aware that a person or entity (including an owner of more than 25% of the entity) has admitted guilt or liability or been adjudicated guilty or liable in any judicial or administrative proceeding of committing a repeated or willful violation of the Iowa Wage Payment collection law, the Iowa Minimum Wage Act, the Federal Fair Labor Standards Act or any comparable state statute or local ordinance, which governs the payment of wages, within the five (5) year period prior to the award or at any time after the award, such violation shall constitute a default under the contract.

FOR THE CITY

FOR THE VENDOR

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST: _____

Approved by:

City Attorney's Office

Date