

CITY OF MADISON

REQUEST FOR BIDS



RFB #: 12114-0-2024-BP

Title: Electric Vehicle Managed Charging Software

City Agency: Engineering Division

Due Date: Thursday February 22, 2024
2:00 PM CST

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1 NOTICE TO BIDDERS

1.1 Summary

The City of Madison **Engineering Division** ("City") is soliciting Bids from qualified vendors for Electric Vehicle Managed Charging Software. Vendors submitting Bids ("Bidders") are required to read this Request for Bids ("RFB") in its entirety and follow the instructions contained herein.

1.2 Important Dates

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

Issue Date:	Thursday January 18, 2024
Questions Due Date:	Thursday February 8, 2024
Answers Posted Date:	Thursday February 15, 2024
Due Date:	Thursday February 22, 2024, 2:00 PM CST

1.3 Format

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

Complete and return Forms A through E and Appendix D to City of Madison Purchasing Services by Thursday February 22, 2024, 2:00 PM CST.

1.4 Labeling

All email correspondence must include RFB #12114-0-2024-BP in the subject line.

1.5 Delivery of Bids

Delivery of electronic copy to: via email to bids@cityofmadison.com

Bids must be delivered as instructed. Deliveries to other City departments and/or locations may result in disqualification.

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

1.6 Appendix A: Standard Terms & Conditions

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

1.7 [Appendix B1: Sample Contract for Purchase of Services for Software/Technology Agreement – Custom DOE Grant Funded](#)

Bidders are responsible for reviewing the sample contracts in Appendix B prior to submission of their Bids.

Appendix B1: A contract similar to the Sample Contract for Purchase of Services for Software/Technology shall will serve as the basis for all service contract(s) resulting from this RFB. For bids that include a SaaS, PaaS or IaaS solution, the City reserves the right to negotiate additional appropriate legal terms governing that technology.

Please also review section 1.26 of this RFB for additional contracting requirements. **By submitting a bid, Proposers affirm their willingness to enter into contract(s) containing the terms found in Appendix B1.** While the City strives to provide the most appropriate sample contract for this RFB, the City reserves the right to modify the sample form for any resulting contract. The City does not negotiate legal terms prior to award.

While the City strives to provide the most appropriate sample contracts for this RFB, the City reserves the right to modify the sample(s) as needed. For example, other legal terms may be required depending on the nature of the technology solution proposed by the vendor.

1.8 [Appendix C: Information Technology Department Software Acquisition Questionnaire \(SAQ\)](#)

This questionnaire is included as a reference at this time, but will be required for all finalists. The SAQ includes important technical questions that must be answered for the City's IT department, including important security questions, and must be answered to their satisfaction.

Do not submit it at this time. Finalists will be required to submit a completed SAQ.

1.9 [Affirmative Action Notice](#)

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

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

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

The complete set of Affirmative Action requirements for this purchase can be found in **paragraph 20 of Appendix A – Standard Terms and Conditions** and, in **Section 13 of Appendix B1 – Sample Contract for Purchase of Services**.

1.10 Multiple Bids

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

1.11 City of Madison Contact Information

The City of Madison
Engineering Division is the
procuring agency: Jon Evans
City of Madison **Engineering Division**
PH: (608) 243-5893
jevans@cityofmadison.com

The City of Madison
Purchasing Services
administers the procurement
function: Brian Pittelli
Purchasing Services
City-County Bldg, Room 407
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703-3346
PH: (608) 267-4969
FAX: (608) 266-5948
bpittelli@cityofmadison.com

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

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

1.12 Inquiries and Clarifications

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

Bidders finding any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFB document shall immediately notify the Buyer and request clarification. In the event that it is necessary to provide additional clarification or revision to the RFB, the City will post addenda – see 1.13 below. Bidders are strongly encouraged to check for addenda regularly.

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

1.13 Addenda

In the event that it is necessary to provide additional clarification or revision to the RFB, the City will post addenda to its Bids distribution websites – see 1.14 below. It is the Bidders responsibility to regularly monitor the websites for any such postings. Bidders must acknowledge the receipt of any addenda on Form B. Failure to retrieve addenda and include their provisions may result in disqualification.

1.14 Bid Distribution Networks

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

State of Wisconsin VendorNet System: State of Wisconsin and local agencies bid network. Registration is free. <http://vendornet.state.wi.us/vendornet>

DemandStar by Onvia: National bid network – Free subscription is available to access Bids from the City of Madison and other Wisconsin agencies, participating in the Wisconsin Association of Public Purchasers (WAPP). A fee is required if subscribing to multiple agencies that are not included in WAPP.

Bid Opportunities: www.cityofmadison.com/finance/purchasing/bidDemandStar.cfm

Home Page: www.demandstar.com

To Register: <https://www.demandstar.com/app/registration>

Please note when registering: Pick the **Wisconsin Association of Public Procurement (WAPP)** to select all current Wisconsin government agencies.

1.15 Local Vendor Preference

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

1.16 Oral Presentations/Site Visits/Meetings

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

Apparent Low Bidder will be required to demonstrate capabilities prior to award.

1.17 Acceptance/Rejection of Bids

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

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

1.18 Withdrawal or Revision of Bids

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

1.19 Non-Material and Material Variances

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

1.20 Public Records

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

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

S. 19.36(5)

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

s. 134.90(1)(c)

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

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

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

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

1.21 Usage Reports

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

1.22 Partial Award

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

1.23 Tax Exempt

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

1.24 Cooperative Purchasing

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

1.25 Bidders Responsibility

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

1.26 City's Contracting Policies for Software and Technology – IMPORTANT NOTICES

See Appendix B1- Contract for Purchase of Services (Software /Technology). This is a sample contract for services that would cover all service aspects of the project, including professional, training, data conversion, implementation services, support and maintenance, hosting, and any software that is delivered as SaaS.

SaaS solution / Hosting - if the proposed solution includes Software-as-a-Service (SaaS) or other cloud hosted services, Appendix B1 will be used, and the City reserves the right to negotiate appropriate legal terms for such services. See details below.

IMPORTANT LEGAL NOTICES FOR SOFTWARE AND TECHNOLOGY CONTRACTS:

Vendor Contract Documents and Legal Terms: The City of Madison does not have a standard license agreement or SaaS subscription agreement. Therefore, bidders selected as finalists will be asked, during the final stages of this RFB, to submit their standard legal terms governing their software and technology. This could include an end user license agreement (EULA), SaaS subscription agreements, Service Level Agreements (SLA) for up time and response times, contracts for support and maintenance services, confidentiality language (if any), data protection language, sample hosting agreements, and any other contract forms ***appropriate for the proposed solution***.

The City will use the sample Contract for Purchase of Services in Appendix B1 as the baseline for this contract and reserves the right to reject any vendor form contracts. However, we expect the vendor to suggest legal terms for the above topics and to prepare the SOW when applicable. If the vendor's contract documents meet the approval of the City Attorney, the City will consider using your contract

form(s) together with the City's mandatory legal terms found in Appendix B1. The City reserves the right to negotiate all contract documents.

Scope of Work (SOW): For projects with implementation or other professional services, the vendor must provide a comprehensive Statement of Work or Scope of Work describing every stage of the project in detail, and may also include a project schedule or methodology for creating the project schedule. The parties will work together to prepare the final SOW which will become part of the contract.

Milestone Payment Schedule: The City will pay for implementation or other professional services occurring over a period of time according to a negotiated schedule based on the City's written acceptance of each milestone. Acceptance criteria for each milestone shall be included in the SOW.

Hosting, Data Ownership, Security: If your bid involves SaaS or other cloud hosted services or infrastructure where customer data will be stored, hosted, reviewed or analyzed by the vendor, please be aware that the City of Madison has specific requirements for its data as a unit of government under State of Wisconsin public records laws. In the resulting contract, you will be required to:

- agree to data handling, retrieval and destruction protocols (See Section 28 in Appendix B1)
- cooperate with any public records requests under Wisconsin law, and indemnify and defend the City of Madison against any claims resulting from your failure to produce our records to us.
- You must agree to make the City's data available for download in a format acceptable to the City for not less than ninety (90) days after contract expiration or termination.
- You may be required to propose data security, back-up and disaster recovery protocols for the security and safe-keeping of the City's data. (See other requirements of this RFB.)
- The City must approve all data centers and their geographic location, which must be within the U.S. This includes third party data centers such as AWS or Azure.
- Unless otherwise agreed, ownership and all intellectual property rights to the City's data remains with the City of Madison and the City does not license its data for use by any other party.
- propose a Service Level Agreement (SLA) for uptime, response times, and remedies for failing to meet those targets. (see below.)

Service Level Agreements (SLA). For any hosted solution, vendors should propose a Service Level Agreement (SLA) with guaranteed uptime, response times, back-up recovery, RTO, RPO. The SLA should also provide remedies for failing to meet those targets, including a system for credits or refunds. **No Indemnification or Limitations of Liability:** The City of Madison does not agree to indemnify, defend or hold harmless any other party including our contracted vendors or other third parties. The City does not agree to limit a contractor's liability to the City for general or direct damages, this includes dollar limits or caps on the contractor's monetary liability. The City does expect our vendor to indemnify us for general claims as well as intellectual property infringement claims against the City resulting from your software/licensed products/services. See Appendix B.

No fees for early cancelation or termination of services. The City of Madison does not agree to fees or penalties for early termination or cancelation of any portion of the contract. Likewise the City does not agree to pay for future contracted annual services if a multi-year contract must be terminated early. See section 25.B. of Appendix B1. The City expects to negotiate terms for annual services that include the City's right to non-renew or cancel on at least an annual basis, with prior written notice to the vendor, without penalty. Where the City agrees to pay annual fees in advance, such as maintenance, hosting or subscription fees, the City does not expect such fees to be refunded in the event of an early termination.

Click-through EULAs, TOS, TOU and Confidentiality Agreements: Please be aware that our employees are not authorized to bind the City of Madison to contractual terms and therefore, cannot click to accept any end-user license agreements, terms of service, terms of use, privacy policies, or other click-through legal terms. The selected vendor must agree to negotiate any such terms to the City's satisfaction and provide executable copies for signature rather than using click-through agreements. Likewise, the City does not compel its employees to sign confidentiality agreements protecting the contractor's confidential information, rather, we will negotiate any needed confidentiality provisions on behalf of the City as a whole.

NDAs: Due to obligations under public records laws, the City of Madison does not sign non-disclosure agreements and does not compel our employees to sign them. Any confidentiality concerns will be handled as part of negotiated confidentiality provisions in the resulting contract.

Online Terms of Use applicable to external users (the public): The City of Madison takes seriously the privacy and the legal exposure of members of the public who are accessing City services through your system. When applicable, we expect to review all online Terms of Use, Privacy Policies and other legal terms that apply to external users and expect the ability to modify such terms if needed.

IT Network Connection Policy: The policy linked below applies and will be incorporated into the contract if any portion of the services or system will require the vendor to make a connection to the City's network: <http://www.cityofmadison.com/attorney/documents/posNetworkConnection.doc>

2 DESCRIPTION OF SERVICES/COMMODITIES

2.1 Notice of Federal Funding

The work associated with this RFB is funded in part by federal grant funds provided to the City of Madison as a subrecipient of a Department of Energy (DOE) Connected Communities Grant awarded to Slipstream Group, Inc as Prime (Award No. DE-EE0009781.0001). The selected bidder will be considered a subcontractor with respect to the Recipient-Subrecipient contract between Slipstream and the City of Madison. The selected bidder will be required to comply with Appendix B2 – Intellectual Property Provisions.

2.2 Background

Grid-interactive efficient buildings (GEBs) offer an integrated approach to coordinating building energy loads for cost savings, continuous demand management, and to optimize energy use for additional grid services. Advanced controls enable flexibility regarding when and how building electrical and thermal loads are operated. In an optimized manner, GEBs can mitigate peak demand challenges, enhance grid reliability/energy resiliency, and balance the supply of renewable energy generation. Buildings offer a unique opportunity for cost-effective demand-side management because they are the nation's primary users of electricity and building energy use drives a comparable share of peak power demand. However, many of these loads are flexible to some degree; with proper communications and controls, loads can be managed to draw electricity at specific times and at different levels, while still meeting occupant productivity and comfort requirements. The US Department of Energy's (DOE) Building Technologies Office is building on existing energy efficiency efforts to optimize the interplay among energy efficiency, demand response, behind-the-meter generation and energy storage to increase the flexibility of demand-side management, all enabled through smart controls. This results in a lower, "flatter," more flexible energy load profile, which in turn delivers a more resilient and productive building, optimizes capital investments, reduces operating costs, and provides access to new revenue. (Rocky Mountain Institute, Grid-Interactive Efficient Buildings (GEBS) - RMI)

The DOE is deploying and testing the GEB concept through their Connected Communities funding program, and the City of Madison (City) and local utility Madison Gas and Electric (MGE) have been selected to receive funding as participants. This program will demonstrate not just one but groups of buildings combined with other types of distributed energy resources (DERs), such as electric vehicle (EV) charging and photovoltaic (PV) generation to reliably and cost-effectively serve as grid assets by strategically deploying efficiency and demand flexibility. Implementing partners on the DOE project include the City, MGE, Slipstream, RMI, ACEEE, and bluEvolution.

2.3 Introduction to City of Madison GEB Demonstration

Through this Grid-interactive Efficient Building pilot, GEB platforms will first be deployed in City buildings and then, if successful, to local businesses through an MGE pilot program. The City would like to receive bids from qualified companies for electric vehicle (EV) managed charging software systems/solutions that provide load shifting and load shedding among other capabilities as part of a complete GEB solution. The awarded vendor will deploy this solution initially at multiple City-owned buildings, information about these buildings is provided in later in this RFB. The EV charger software solution must have the capability to interface with an energy management information system (EMIS). The EMIS is being procured separately and not part of this RFB.

2.4 Required Solution and Scope of Work

The purpose of this Request for Bid (RFB) is to solicit bids from qualified vendors to provide an electric vehicle managed charging software turnkey solution at City of Madison buildings for load shed (ADR), load optimization, charge prioritization, tariff optimization (electric demand savings), solar charging, access groups, and billing structures.

This project is in alignment with the U.S. Department of Energy's National Labs research on energy management systems and Grid-interconnected Efficient Buildings, which emphasizes the role of EV managed charging in managing grid-wide electricity demand curves and contributing to a more resilient and efficient power grid. The term "turnkey" in this context means that the selected vendor will deliver all necessary software components, complete installation or delivery as a service of those components, provide energy management integration capability as required (see further requirements for energy management integration below), support demand management efforts and implement new capabilities if required (in partnership with the City). There is no hardware associated with this bid.

Required integrations/interfaces:

- The proposed solution must seamlessly integrate with the existing EV chargers (described in Table 1) and be capable of incorporating data from third-party sources, such as energy meter data.
- The proposed solution must also integrate with the City's energy management information system (e.g. using OCPP), for data normalization, command and control (with exceptions), monitoring, alarming and reporting. The selected vendor will be required to work with the City's EMIS vendors to ensure necessary integrations and data sharing between the systems.
- the solution must interface with grid services and Madison Gas and Electric (MGE, the local utility), including receiving and sending ADR 2.0 compliant signals from and to utilities, grid operators, or Demand Response (DR) / Distributed Energy Resources (DER) aggregators. This capability is essential, as the U.S. Department of Energy's National Labs have highlighted the importance of energy management systems and Grid-Interactive Efficient Buildings in facilitating more dynamic interactions with the grid to optimize electricity demand management and support grid stability.

The vendor is required to provide a comprehensive solution, including any necessary subcontracting for aspects of the project that they cannot self-perform. All subcontractor costs must be included in the vendor's final bid. The selected vendor will be responsible for the implementation, integration, and ongoing support of the EV managed charging solution, ensuring that it meets the project's objectives and requirements. The initial contract under this grant-funded RFB will cover the implementation and related services. Future support/maintenance or subscription services may be handled in a separate contract.

The platform should enable load shed, load optimization, charge prioritization, tariff optimization, solar charging, real-time charging data, restricted access and billing. The successful vendor will collaborate closely with the client to ensure that the proposed solution meets these objectives and can adapt to future requirements or changes in the building's systems or infrastructure.

2.5 Sites and Chargers

The sites where EV managed charging software will be installed and the existing charging equipment are listed in Table 1.

Table 1 Buildings for EV managed charging

Buildings	Number of Ports	Charger Type	EMIS
Engineering Operations	11	JuiceBox Premium v8.6	AceIoT Voltron
Wilson Street Garage	10	JuiceBox Premium v8.6	Nantum
Fleet Headquarters	4	(x1) JuiceBox, Pro 80, v8.17.08 (x2) JuiceBox, Pro 32, v8.17.08 (x1) JuiceBox Premium v8.6	Nantum
Midtown Police District	1	JuiceBox, Premium, v8.6	Nantum
Streets West	1	JuiceBox, Pro 32, v8.17.08	AceIoT Voltron
City County Building	13	JuiceBox, Pro 32, v8.17.08	n/a
Fairchild	1	JuiceBox, Pro 32, v8.17.08	n/a
Fire Admin	2	JuiceBox Premium v8.6	n/a
Fire Station 3	1	JuiceBox Premium v8.6	n/a
North Police District	1	JuiceBox Premium v8.6	n/a
Yahara Park	1	JuiceBox, Pro 80, v8.17.08	n/a
Goodman Park	1	JuiceBox, Pro 32, v8.17.08	n/a
Streets East	1	JuiceBox, Pro 32, v8.17.08	n/a
South Police District	1	JuiceBox Premium v8.6	n/a
West Police District	1	JuiceBox Premium v8.6	n/a
East Police District	1	JuiceBox, Premium, v8.6	n/a
Total number of ports	51	N/A	N/A
Total number of buildings	16	N/A	N/A

2.6 Criteria for Selection

Selection is based on the lowest cost bid that meets the minimum requirements:

1. Ability to Contract with City of Madison – See Sections 1.6 through 1.9. Of particular note is the ability to meet the requirements in Appendix C and complete the form in a timely manner, when requested.
2. Ability to meet the Terms of Work, as outlined in Section 2.6.
3. Ability to meet Buy American Requirements, as outlined in Section 2.8.
4. Adequate response to Capabilities listed in Appendix D.
5. Ability to demonstrate Capabilities.

A registered and approved local vendor, receives a 5% reduction in cost for selection purposes. See Section 1.15.

2.7 Estimated Project Timeline and Contract Term

The selected vendor will be expected to perform installation and commissioning of the EV managed charging software from June to August of 2024. Note that this will include the required integration with an Energy Management Information System during this period. The other project partners will then monitor and test the entire integrated system's performance from August 2024 to September 2025. Upon successful implementation, the City expects to transition to an ongoing annual support/maintenance or subscription for the solution, which may be executed as a separate agreement, and not federally funded.

2.8 City of Madison Information Technology Policies and Procedures

To get access to systems owned and managed by the City of Madison, all relevant policies of the City's Information Technology (IT) Department must be followed in relation to any work performed under this RFB. The following links contain official policies of the City regarding the appropriate use of City networks, devices, and a directory of technology standards. Please also see section 1.26, and review the questionnaire in Appendix C (SAQ), which only finalists will be required to complete.

<https://www.cityofmadison.com/mayor/apm/3-9.pdf>

<https://www.cityofmadison.com/mayor/apm/3-20.pdf>

<https://www.cityofmadison.com/attorney/documents/posNetworkConnection.doc>

Other relevant City of Madison IT policies and guidance can be accessed here:

<https://www.cityofmadison.com/employeenet/information-technology/policies-standards>

2.9 Site Walkthrough – Non Mandatory

Non mandatory. If vendors need to tour the facilities in question before providing their bid, a walkthrough of facilities can be arranged for at the discretion of contacts in Section 1.11 based on their availability.

2.10 Buy American Requirement

All manufactured products exceeding \$5,000 per unit are subject to federal Buy American requirements. If manufactured products needed for the proposed solution do not meet Buy American requirements, respondents must address the following:

1. Identify equipment needed for purchase including make/model and technical specifications.
2. The percentage of US-made components comprising the identified equipment.
3. Demonstrate what level of market research and analysis has been done with respect to potential alternative equipment. Please provide a list of all other equipment identified and considered as alternatives and explain why such equipment are not suitable.

2.11 Utility Rate Structures

MGE's CG-4 electric tariff is for commercial buildings with a maximum 15-minute demand in excess of 20 kW, but no more than 200 kW¹. Table 2 summarizes the various charges associated with this tariff.

The summer period is from June 1 through September 30. The winter period is for all other months of the year. The on-peak period 1 is weekdays from 10 am to 1 pm, the on-peak period 2 is from 1 pm to 6 pm, and the on-peak period 3 is from 6 pm to 9 pm. On-peak periods do not include the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.

Table 2 MGE CG-4 electric tariff summary (as of December 2022)

Unit	Summer	Winter	Description
\$/day	\$6.31090	\$6.31090	service charge
\$/kW/day	\$0.08480	\$0.08480	distribution, demand charge
\$/kWh	\$0.01590	\$0.01590	distribution charge
\$/kW/day	\$0.42653	\$0.34931	electricity, demand charge
\$/kWh	\$0.06043	\$0.06043	base (for all kWh)
\$/kWh	\$0.01849	\$0.01826	on-peak period 1 (in addition to base)
\$/kWh	\$0.02775	\$0.01552	on-peak period 2 (in addition to base)
\$/kWh	\$0.02259	\$0.01966	on-peak period 3 (in addition to base)

For buildings that exceed MGE's net metering limit and are thus subject to the parallel generation buyback rates² as specified in Schedule PG-1³ for any generation in excess of demand. The buyback rates are provided in Table 3.

Table 3 MGE parallel generation buyback rates

Unit	Rate	Description
\$/kWh	\$0.05819	Base energy (for all kWh)
\$/kWh	\$0.02001	Energy adder for on-peak periods 1, 2, and 3
\$/kWh	\$0.03140	Capacity adder for on-peak periods 1, 2, and 3

¹ <https://www.mge.com/MGE/media/Library/pdfs-documents/rates-electric/e4-3-0-ScheduleCg-4.pdf>

² <https://www.mge.com/MGE/media/Library/pdfs-documents/rates-electric/e2-2-0-ScheduleMSC-2.pdf>

³ <https://www.mge.com/MGE/media/Library/pdfs-documents/rates-electric/e11-1-0-SchedulePg-1.pdf>

3 REQUIRED INFORMATION AND CONTENT TO BE INCLUDED WITH BID

1. Form A – Signature Affidavit
2. Form B – Receipt Forms and Submittal Checklist
3. Form C – Contractor Profile Information
4. Form D1 – Cost Proposal
5. Form D2 – Cost Proposal Excel Workbook
6. Form E – References
7. Appendix D – Qualification Questions



Form A: Signature Affidavit

RFB #: 12114-0-2023-BP Electric Vehicle Managed Charging Software

This form must be returned with your response.

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

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

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

COMPANY NAME

SIGNATURE

DATE

PRINT NAME OF PERSON SIGNING



Form B: Receipt of Forms and Submittal Checklist

RFB #: 12114-0-2023-BP Electric Vehicle Managed Charging Software

This form must be returned with your response.

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

Forms	Initial to Acknowledge SUBMITTAL	Initial to Acknowledge RECEIPT
Description of Services/Commodities	N/A	
Form A: Signature Affidavit		
Form B: Receipt of Forms and Submittal Checklist		
Form C: Vendor Profile		
Form D1 : Cost Proposal		
Form D2: Cost Proposal Excel		
Form E: References		
Appendix A: Standard Terms & Conditions	N/A	
Appendix B1: Sample Contract for Purchase of Services for Software/Technology – Custom DOE Grant Funded	N/A	
Appendix B2: Intellectual Property Provisions	N/A	
Appendix C: Information Technology Department Software Acquisition Requirement – FOR REFERENCE ONLY	N/A	
Appendix D: Qualification Questions		
Addendum #	N/A	
Addendum #	N/A	

COMPANY NAME



Form C: Vendor Profile

RFB #: 12114-0-2023-BP Electric Vehicle Managed Charging Software

This form must be returned with your response.

COMPANY INFORMATION

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

AFFIRMATIVE ACTION CONTACT

If the selected contractor employs 15 or more employees and does aggregate annual business with the City of \$50,000 or more, the contractor will be required to file an Affirmative Action Plan and comply with the City of Madison Affirmative Action Ordinance, Section 39.02(9)(e), within thirty (30) days contract signature. Vendors who believe they are exempt based on number of employees or annual aggregate business must file a request for exemption. Link to information and applicable forms: <https://www.cityofmadison.com/civil-rights/contract-compliance/vendors-suppliers>

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

ORDERS/BILLING CONTACT

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

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

LOCAL VENDOR STATUS

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

CHECK ONLY ONE:

- Yes**, we are a local vendor *and* have registered on the City of Madison website under the following category: _____ www.cityofmadison.com/business/localPurchasing
- No**, we are not a local vendor or have not registered.



Form D1: Cost Proposal

RFB #: 12114-0-2023-BP Electric Vehicle Managed Charging Software

This form must be returned with your response.

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

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

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

Please complete the Excel Workbook D2. When you return, please send back as an Excel file. Do not change to a pdf.

COMPANY NAME



Form E: References

RFB #: 12114-0-2023-BP Electric Vehicle Managed Charging Software

This form must be returned with your response.

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

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

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

COMPANY NAME

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

COMPANY NAME



CITY OF MADISON

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

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

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

11. Cancellation.

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

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

12. Specifications.

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

13. Regulatory Compliance.

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

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

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

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

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

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

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

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

20. Affirmative Action.

A. The following language applies to all successful bidders employing fifteen (15) or more employees (MGO 39.02(9)(c):

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec. 20.A.) at the time the Request for Exemption in 20.B.(2) is made.

B. Articles of Agreement, Request for Exemption, and Release of Payment:

The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the Finance Director

**As determined by the Department of Civil Rights

(1) Exempt Status: In this section, "Exempt" means the Contractor is exempt from the Articles of Agreement in section 20.B.(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights ("Department") makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 20.B.(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

(2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.

(3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City for the calendar year in which the contract is in effect. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 20.B.(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.**

(4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to ensure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

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

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (check one):

- A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

21. Nondiscrimination. During the term of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs

or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

22. Prevailing Wage. Where applicable under federal law, the Contractor warrants that prevailing wages will be paid to all trades and occupations.
23. **Indemnification.** The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of Contractor and any of Contractor's subcontractors in the performance of this agreement, whether caused by or contributed to by the negligence of the City or its officers, officials, agents or employees.
24. Insurance.
The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
- a. Commercial General Liability - The Contractor shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.
 - b. Automobile Liability - The Contractor shall procure and maintain during the life of this contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - c. Worker's Compensation - The Contractor shall procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.
 - d. Professional Liability - The Contractor shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. If such policy is a "claims made" policy, all renewals thereof during the life of the contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the contract. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.
 - e. Acceptability of Insurers - The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
 - f. Proof of Insurance, Approval. The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:
City of Madison
ATTN: Risk Management, Room 406
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
- The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.
25. Work Site Damages. Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.
26. Compliance.
- a. Regulations. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.
 - b. Licensing and Permits. The Contractor selected under this bid shall be required to demonstrate valid **possession of appropriate required licenses and will** keep them in effect for the term of this contract. The Contractor shall also be required, when appropriate, to obtain the necessary building permits prior to performing work on City facilities.
27. Warranty of Materials and Workmanship.
- a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades.
 - b. Work not conforming to these warranties shall be considered defective.

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

28. Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of the City notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this contract and its specifications.
29. Reservation of the Right to Inspect Work. At any time during normal business hours and as often as the City may deem necessary, the Contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at any time during the duration of this contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, contract requirements and specifications.
30. Sweatfree Procurement of Items of Apparel. If this bid results in the procurement of \$15,000 or more in garments or items of clothing, any part of which is a textile, or any shoes/ footwear, then Sec. 4.25 of the Madison General Ordinances, "Procurement of Items of Apparel", is hereby incorporated by reference and made part of this contract. See Section 4.25(2) at www.municode.com for applicability specifics. The contractor shall follow labor practices consistent with international standards of human rights, meaning that, at a minimum, contractor shall adhere to the minimum employment standards found in Section 4.25 and shall require all subcontractors and third-party suppliers to do the same. For purposes of sec. 4.25, "Subcontractor" means a person, partnership, corporation or other entity that enters into a contract with the contractor for performance of some or all of the City-contracted work and includes all third-party suppliers or producers from whom the contractor or its contractors obtains or sources goods, parts or supplies for use on the city contract and is intended to include suppliers at all level of the supply chain. The standards in Sec. 4.25 shall apply in all aspects of the contractor's and subcontractor's operations, including but not limited to, manufacture, assembly, finishing, laundering or dry cleaning, (where applicable), warehouse distribution, and delivery. Contractor acknowledges that by entering into this contract, Contractor shall be subject to all of the requirements and sanctions of sec. 4.25 of the Madison General Ordinances.
- The sanctions for violating Sec. 4.25 under an existing contract are as follows:
- Withholding of payments under an existing contract.
 - Liquidated damages. The contractor may be charged liquidated damages on an existing contract of two thousand dollars (\$2,000) per violation, or an amount equaling twenty percent (20%) of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the City demonstrates were produced in violation of the contract and/or this ordinance per violation; whichever is greater.
 - Termination, suspension or cancellation of a contract in whole or in part.
 - Nonrenewal when a contract calls for optional renewals.
 - Nonrenewal for lack of progress or impossible compliance. The City reserves the right to refuse to renew the contract that calls for optional renewals, when the contractor cannot comply with the minimum standard under (4)(b) and the noncompliance is taking place in a country where:
 - Progress toward implementation of the standards in this Ordinance is no longer being made; and
 - Compliance with the employment standards in the Ordinance is deemed impossible by the City and/or any independent monitoring agency acting on behalf of the City. Such determination shall be made in the sole opinion of the City and may be based upon examination of reports from governmental, human rights, labor and business organizations and after consultation with the relevant contractors and sub-contractors and any other evidence the City deems reliable.
 - Disqualification of the contractor from bidding or submitting proposals on future City contracts, or from eligibility for future city procurements as defined in sub. (2), whether or not formal bidding or requests for proposals are used, for a period of one (1) year after the first violation is found and for a period of three (3) years after a second or subsequent violation is found. The disqualification shall apply to the contractor who committed the violation(s) whether that be under the same corporate name, or as an individual, or under the name of another corporation or business entity of which he or she is a member, partner, officer, or agent.
- The exercise by the City of any or all of the above remedies, or failure to so exercise, shall not be construed to limit other remedies available to the City under this Contract nor to any other remedies available at equity or at law.
31. Local Purchasing. The City of Madison has adopted a local preference purchasing policy granting a 5 percent request for proposal and 1 percent request for bid scoring preference to local vendors.
- To facilitate the identification of local suppliers, the City has provided an on-line website as an opportunity for suppliers to voluntarily identify themselves as local, and to assist City staff with their buying decisions. Proposers seeking to obtain local preference are required to register on the City of Madison online registration website. Only vendors registered as of the bid due date will receive preference. Additional information is available at: <https://www.cityofmadison.com/finance/purchasing/local-businesses/register-business/>.
32. Weapons Prohibition. Contractor shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the Contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m). This section does not apply to employees who are required to carry a weapon under the express terms of the Contract (such as armed security guard services, etc.).
33. Software & Technology Purchases.
- Software Licenses. All software license agreements shall include the City's mandatory legal terms and conditions as determined by the City Attorney. Please be advised that no City employee has the authority to bind the City by clicking on an End User License Agreement (EULA) or any other click-through terms and conditions without being specifically authorized by the City's Chief Information Officer through procedures approved by the City Attorney and Risk Manager. All legal documents associated with the purchase or download of software must be reviewed by the City Attorney and may only be signed by an individual authorized to do so.

- b. Network Connection Policy. If this purchase includes software support, software maintenance, network services, and/or system development services and will require a Network Connection the City Network (as defined in the following link), the City's Network Connection Policy found at this link: www.cityofmadison.com/attorney/documents/posNetworkConnection.doc is hereby incorporated and made a part of the Contract and Contractor agrees to comply with all of its requirements.

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

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

- a. Definitions. For purposes of this requirement, "Arrest and Conviction Record" includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

"Conviction record" includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

"Background Check" means the process of checking an applicant's arrest and conviction record, through any means.

- b. Requirements. For the duration of any contract awarded under this RFP, the successful contractor shall:

- (1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant's arrest and conviction record, as defined herein.
- (2) Refrain from asking an applicant in any manner about their arrest or conviction record until after a conditional offer of employment is made to the applicant in question.
- (3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
- (4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure, using language provided by the City.
- (5) Comply with all other provisions of Sec. 39.08, MGO.

- c. Exemptions: This section does not apply when:

- (1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
- (2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. C.1. or 2. above, contractor must demonstrate to the City that there is a law or regulation that requires the background check in question. If so, the contractor is exempt from this section for the position(s) in question.

change, and propose a replacement Contract Agent within seven (7) calendar days. The City may accept another person as the Contract Agent or may terminate this Contract under Section 25, at its option.

9. **PROSECUTION AND PROGRESS.**

- A. Services under this Agreement shall commence upon written order from the City to the Contractor, which order will constitute authorization to proceed; unless another date for commencement is specified elsewhere in this Contract including documents incorporated in Section 3.
- B. The Contractor shall complete the services under this Agreement within the time for completion, if any, specified in the attachment(s) listed in Section 3. The time for completion shall not be extended because of any delay attributable to the Contractor, but it may be extended by the City in the event of a delay attributable to the City, or in the event of unavoidable delay caused by war, insurrection, natural disaster, or other unexpected event beyond the control of the Contractor. If at any time the Contractor believes that the time for completion of the work should be extended because of unavoidable delay caused by an unexpected event, or because of a delay attributable to the City, the Contractor shall notify the City as soon as possible, but not later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work. Notwithstanding the foregoing or any other provision in this Contract, the parties agree the Covid-19 pandemic is not an unexpected event that will excuse Contractor from any provision of this Contract or otherwise qualify as a force majeure event, absent the City's express written agreement.

10. **EXTRA SERVICES.**

Extra services or decreased services means services which are not different in kind or nature from the services called for in the Scope of Services, Section 3, but which may increase or decrease the quantity and kind of labor or materials or expense of performing the services. Extra services may not increase the total Contract price, as set forth in Section 23, unless the Contract is amended as provided in Section 9 above.

11. **NO WAIVER.**

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. **NON-DISCRIMINATION.**

During the term of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

13. **AFFIRMATIVE ACTION.**

A. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c):

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec. 13.A.) at the time the Request for Exemption in 13.B.(2) is made.

B. Articles of Agreement, Request for Exemption, and Release of Payment:
The "ARTICLES OF AGREEMENT" beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or fewer	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the Finance Director

**As determined by the Department of Civil Rights

(1) Exempt Status: In this section, "Exempt" means the Contractor is exempt from the Articles of Agreement in section 13.B(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights ("Department") makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 13.B(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

(2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.

(3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City in the calendar year. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 13.B(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

(4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to ensure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

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

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (check one):

- A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract takes effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

14. SEVERABILITY.

It is mutually agreed that in case any provision of this Contract is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Contract remain in full force and effect.

15. NOTICES.

All notices to be given under the terms of this Contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY:

(Department or Division Head)

FOR THE CONTRACTOR:

16. STATUS OF CONTRACTOR/INDEPENDENT/TAX FILING.

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

Contractor shall provide its taxpayer identification number (or social security number) to the Finance Director, 210 Martin Luther King Jr. Blvd, Room 406, Madison, WI 53703, prior to payment. The Contractor is informed that as an independent Contractor, s/he may have a responsibility to make estimated tax returns, file tax returns, and pay income taxes and make social security payments on the amounts received under this Contract and that no amounts will be withheld from payments made to this Contractor for these purposes and that payment of taxes and making social security payments are solely the responsibility and obligation of the Contractor. The Contractor is further informed that s/he may be subject to civil and/or criminal penalties if s/he fails to properly report income and pay taxes and social security taxes on the amount received under this Contract.

17. **GOODWILL.**
Any and all goodwill arising out of this Contract inures solely to the benefit of the City; Contractor waives all claims to benefit of such goodwill.
18. **THIRD PARTY RIGHTS.**
This Contract is intended to be solely between the parties hereto. No part of this Contract shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
19. **AUDIT AND RETAINING OF DOCUMENTS.**
The Contractor agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, accounting of services rendered, and any other reports or documents relevant to the provision of services under this Contract or the enforcement of its provisions. Such documents shall be provided according to the schedule (if any) included in this Contract, or Any within five (5) business days after Contractor receives the City's written request, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Contract shall be retained by the Contractor for a period of three (3) years after completion of all work under this Contract, in order to be available for audit by the City or its designee.
20. **CHOICE OF LAW AND FORUM SELECTION.**
This Contract shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
21. **COMPLIANCE WITH APPLICABLE LAWS.**
The Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Contractor and its agents and employees.
22. **CONFLICT OF INTEREST.**
A. The Contractor warrants that it and its agents and employees have no public or private interest, and will not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the services under this Agreement.
B. The Contractor shall not employ or Contract with any person currently employed by the City for any services included under the provisions of this Agreement.
23. **ENTIRE AGREEMENT.**
This Contract for Purchase of Services, including any and all attachments, exhibits and other documents referenced in Section 3 (hereafter, "Agreement" or "Contract") is the entire Agreement of the parties and supersedes any and all oral contracts and negotiations between the parties. If any document referenced in Section 3 includes a statement that expressly or implicitly disclaims the applicability of this Contract for Purchase of Services, or a statement that such other document is the "entire agreement," such statement shall be deemed rejected and shall not apply to this Contract.
24. **AMENDMENT.**
This Contract shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Contract may only be made by a written amendment, signed by the duly authorized agent or agents who executed this Contract.
25. **DEFAULT/TERMINATION.**
A. In the event Contractor shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Contractor, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Contractor, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Contract and all rights of Contractor under this Contract.
B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the Contractor with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Contractor and accepted by the City.
26. **INDEMNIFICATION.**
The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Contractor's and/or Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
27. **INSURANCE (DOE Grant Funded)**
The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability. The Contractor shall procure and maintain during the life of this Contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, advertising injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and non-contributory and list the City of Madison, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Worker's Compensation. The Contractor shall procure and maintain during the life of this Contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$1,000,000. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.

Professional/Technology Errors & Omissions. The Contractor shall procure and maintain Professional liability insurance, covering technology errors and omissions, with coverage of not less than \$2,000,000 per claim and in the aggregate. Coverage shall include, but not be limited to, both liability and property loss exposures including technology services, technology products, media content, network security breaches, extortion threats, crisis management expense, and business interruption and negligent acts, errors, mistakes, and omissions arising out of the work or services performed by Contractor, or any person employed or contracted by Contractor. If such policy is a "claims made" policy, all renewals thereof during the life of the Contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the Contract. This coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.

Cyber Liability. Contractor shall procure and maintain during the life of this Contract, Cyber and Privacy insurance with limits of not less than \$2,000,000 per claim and in the aggregate. Coverage shall include, but not be limited to, coverage for unauthorized access, denial of service attacks, computer viruses, transmission of malicious code, and failure of security; breach of privacy and the failure to protect and disclosure of personally identifiable information, payment card information, and health information; and violation of any federal, state or local law or regulation in connection with the protection of information, including coverage for fines and penalties to the extent allowed by applicable law. If such policy is a "claims made" policy, all renewals thereof during the life of the Contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the Contract.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City Risk Manager. If any of the policies required above expire while this Contract is still in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:

City of Madison
ATTN: Risk Management, Room 406
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703

The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.

28. **COOPERATION WITH PUBLIC RECORDS REQUESTS, RELEASE OF DATA.**

This section 28 applies if any of the services under this Contract include sharing, providing, transmitting, processing, handling, storing, or any other access by the Contractor, whether by electronic or any other means, of "Records" as defined below:

- A. **Records Status Under the Wisconsin Public Records Laws.** In this section, "Records" are as defined in Wis. Stat. §19.32(2) and include Contractor's Records as described in Wis. Stat. §19.36(3). Records fall into two categories: (1) Records prepared by the Contractor in the course of providing services under this Contract that reside with the Contractor during the term of the Contract and (2) Records originating with the City that are provided to Contractor under this Contract. The City is the Custodian of all of the City's Records, including any data and information provided by the City to Contractor under this Contract, and as such, the City shall make a final determination under the Wisconsin Public Records Laws as to whether to allow public inspection or release of such Records. Contractor acknowledges that the City cannot hire a contractor to conduct public business with the purpose or effect of evading the City's responsibilities under the Wisconsin Public Records Laws (Wis. Stat. §§ 19.31-19.37).
- B. **Duty to Cooperate with City Records Custodians.** Contractor shall cooperate and coordinate concerning any requests by third parties brought under the Wisconsin Public Records Laws for inspection or production of Records under this Contract. Contractor agrees to produce any and all records under this Contract that are requested by a City records custodian (defined in Wis. Stat. § 19.33, hereafter, "Custodian") in response to a request received by the City from any member of the public. Contractor shall produce such records within ten (10) business days from the date requested by the Custodian or another mutually agreeable time. At the time such records are delivered to the City the Contractor shall inform the Custodian, in writing, of any and of all reasons Contractor believes that such records, or identified portions thereof, should not be publicly disclosed. The Custodian shall notify the Contractor, in writing, whether s/he agrees or disagrees with such reasoning, of the Custodian's intent to disclose records, the date such disclosure will be made, and the name and address of the requester of the records. The City has no obligation to withhold Records at the request of Contractor, absent a court order.

If Contractor fails to produce Records as defined above in response to a request from the City resulting from a third party's request under the Open Records laws, or if the City should decide to withhold Records produced under this Contract at the Contractor's request and any third party commences an action against the City of Madison or an officer, official, agent, employee, or its Custodian as a result of this decision, Contractor shall indemnify, defend and hold harmless the City's Records Custodian, the City of Madison, and its officers, officials, agents, and employees from all loss, risk of loss, claims, judgments and damages (including expenses, costs and actual attorney fees), sustained or incurred because or by reason of any claim, demand, suit, action, judgment, execution, for damages for any kind alleged to have been caused by, resulting from, arising out of or in any manner related to the failure to release or produce Records. The City shall give prompt notice of any such claim or action that may trigger Contractor's obligations under this paragraph, using the notice procedures set forth in the Contract.

- C. Customer's Access To Records And Handling Of Records. Upon termination or expiration of this Contract, Contractor will allow the City not less than ninety (90) days to export any and all data meeting the definition of "Records" under paragraph 1 and residing on the Contractor's service. The City shall have the right to extract and retrieve all such data in a format acceptable to the City, at no additional cost, during the term of this Contract and for ninety (90) days from the date of termination or expiration.

29. **BAN THE BOX - ARREST AND CRIMINAL BACKGROUND CHECKS.** (Sec. 39.08, MGO. Applicable to contracts exceeding \$25,000.)

- A. **DEFINITIONS.** For purposes of this section, "Arrest and Conviction Record" includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

"Conviction record" includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

"Background Check" means the process of checking an applicant's arrest and conviction record, through any means.

- B. **REQUIREMENTS.** For the duration of this Contract, the Contractor shall:

- (1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant's arrest and conviction record, as defined herein.
- (2) Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.
- (3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
- (4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with information about the ordinance and complaint procedure using language provided by the City.
- (5) Comply with all other provisions of Sec. 39.08, MGO.

- C. **EXEMPTIONS:** This section does not apply when:

- (1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
- (2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. C.(1) or (2) above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, the contractor is exempt from this section for the position(s) in question.

30. **WEAPONS PROHIBITION.**

Contractor shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the Contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

31. **IT NETWORK CONNECTION POLICY.**

If this Contract includes services such as software support, software maintenance, network services, and/or system development services that will require a Network Connection the City Network (as defined in the following link), the City's Network Connection Policy found at this link: <http://www.cityofmadison.com/attorney/documents/posNetworkConnection.doc> is hereby incorporated and made a part of this Contract and Contractor agrees to comply with all of its requirements.

32. **GASB.**

During the term of this Contract and for twelve (12) months thereafter, Contractor shall provide all information requested by the City and/or its contracted auditor relating to compliance with applicable Government Accountability Standards Board (GASB) standards, including but not limited to GASB Statement No. 87 (Leases) and GASB Statement No. 96 (Subscription-Based Information Technology Arrangements). If applicable, Contractor shall structure its activities, invoices, and record-keeping under this Contract to provide the City with all necessary cost elements for GASB compliance, including but not limited to: Lease Term in Years, Discount Rates, Separates Multiple components (Equipment from Software), Lease Incentives, Buy-Outs, Amendments to the Terms, and cooperate with all other requests of the City and its auditor as the City deems necessary for its GASB compliance. Contractor shall comply with all applicable Securities and Exchange Commission (SEC) regulations.

33. **AUTHORITY.**

Contractor represents that it has the authority to enter into this Contract. If the Contractor is not an individual, the person(s) signing on behalf of the Contractor represents and warrants that they have been duly authorized to bind the Contractor and sign this Contract on the Contractor's behalf.

34. **COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY.**

This Contract may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Contract may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

SAMPLE

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

CONTRACTOR

(Type or Print Name of Contracting Entity)

By: _____
(Signature)

(Print Name and Title of Person Signing)

Date: _____

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

By: _____
Satya Rhodes-Conway, Mayor

Date: _____

Approved:

David P. Schmiedicke, Finance Director

By: _____
Maribeth Witzel-Behl, City Clerk

Date: _____

Date: _____

Approved as to Form:

Eric T. Veum, Risk Manager

Michael Haas, City Attorney

Date: _____

Date: _____

For City Use Only: SIGNATURE INSTRUCTIONS FOR CONTRACTS SIGNED BY MAYOR/CLERK:
Obtain contractor's signature first. Route this contract & all of its attachments for City signatures using the City Clerk's Contract Routing Database. Include 1 copy of authorizing resolution & 1 copy of the Certificate of Insurance.

NOTE: Certain service contracts may be executed by the designee of the Finance Director on behalf of the City of Madison:

By: _____
Mary Richards, Procurement Supervisor

_____ Date

- MGO 4.26(3) and (5) authorize the Finance Director or designee to sign purchase of service contracts when all of the following apply:
- (a) The funds are included in the approved City budget.
 - (b) An RFP or competitive process was used, or the Contract is exempt from competitive bidding under 4.26(4)(a) (contracts less than \$50,000 in total or less than \$50,000 per year for software and technology services are exempt.)
 - (c) The City Attorney has approved the form of the Contract.
 - (d) The Contract complies with other laws, resolutions and ordinances.
 - (e) The Contract is for a period of 1 year or less, OR not more than 5 years AND the average cost is not more than \$100,000 per year, AND was subject to competitive selection. (If \$50,000 or more and exempt from bidding under 4.26(4)(a), regardless of duration of the Contract, the Common Council must authorize the Contract by resolution and the Mayor and City Clerk must sign, per 4.26(5)(b).)

For City Use Only: SIGNATURE INSTRUCTIONS WHEN SIGNED BY FINANCE (PURCHASING):
Obtain contractor's signature first. Attach the contractor-signed contract with all attachments/exhibits and the certificate of insurance to the requisition in MUNIS.

**Grant and Cooperative Agreement
Research, Development, or Demonstration
Non-Federal Entity
(Institution of higher education or Nonprofit organization)**

A Non-Federal Entity is subject to the intellectual property requirements at 2 CFR 200.315.

NOTE: In reading these provisions, the terms contractor, recipient, and non-Federal Entity are used interchangeable. Similarly the terms contract and subcontract are used interchangeable with award and subaward respectively.

2 CFR 200.315 Intangible Property

(a) Title to intangible property (see §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in §200.313 Equipment paragraph (e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."

(d) The Federal government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;
and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e) Freedom of Information Act (FOIA).

(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

37 CFR 401.14 Standard Patent Rights Clause (as modified by the EERE/ARPA-E DEC)

The following is the standard patent rights clause to be used as specified in §401.3(a) and as modified by EERE/ARPA-E DEC

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(b) Allocation of Principal Rights

The contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention -

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(3) In any country in which the contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) Upon breach of paragraph (h) or paragraph (n) of this Patent Rights clause.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

(1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c) above or breaches paragraph (h) or paragraph (n) of this Patent Rights clause. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following

statement, “This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention.”

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR 910.362(c).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, products that embody or are made through the use of the subject invention, manufacturing locations of such products and such other data and information as DOE may reasonably specify. The contractor also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement

for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;

(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

(l) Communication

Unless other directed by Patent Counsel, all reports and notifications required by this clause shall be submitted in accordance with the instructions provided in the Federal Assistance Reporting Checklist (FARC) of this contract.

(m) Electronic Filing

Unless otherwise specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

(n) U.S. Manufacturing Plan

(1) The contractor shall comply with the U.S. Manufacturing Plan that was part of the application used to secure this contract. In accordance with the U.S. Manufacturing Plan:

The contractor agrees that any products embodying or produced through the use of any Subject Invention will be manufactured substantially in the United States, unless the contractor can show to the satisfaction of DOE that it is not commercially feasible to do so. In the event DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The contractor further agrees to make the above commitment

binding on any assignee or licensee or any entity otherwise acquiring rights to any Subject Invention, including subsequent assignees or licensees.

The above commitment does not apply to a Subject Invention that the Government has title pursuant to this patent rights clause due to contractor electing not to take title, fails to file a patent application or decision not to continue patent protection for the Subject Invention.

(2) The requirement and enforcement of the U.S. Manufacturing Plan is in accordance with the Determination of Exceptional Circumstances (DEC) executed by DOE on September 11, 2013. A copy of the DEC is attached to these IP provisions as Attachment 1. As set forth in 37 CFR 401.4, the contractor has the right to appeal the imposition of the DEC within 30 working days from the time it receives a copy of it.

(End of clause)

Attachment 1: Determination of Exceptional Circumstances



Department of Energy

Washington, DC 20585

September 9, 2013

DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES UNDER THE BAYH-DOLE ACT FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, AND ADVANCED ENERGY TECHNOLOGIES

Under the Bayh-Dole Act, 35 U.S.C. §§ 200-12 ("Bayh-Dole"), Federal agencies may determine that "exceptional circumstances" exist such that a modification in the patent rights disposition provided under the Act would better promote its objectives. The Department of Energy ("DOE") has determined that exceptional circumstances exist for disposition of patent rights arising under research, development, demonstration, and market transformation projects involving energy efficiency, renewable energy, and advanced energy technologies as described in Title IX, Subtitles A through D of the Energy Policy Act of 2005 (42 U.S.C. 16191 through 16256), and Title V, Section 5012 of the America COMPETES Act of 2007 (as amended by Title IX, Section 904 of the America COMPETES Act of 2010)(42 U.S.C. 16538) to better promote U.S. manufacturing.

These technologies are (1) energy efficiency, storage, integration, and related technologies, including (as examples only) for buildings, transportation, and energy-intensive industries; (2) renewable energy technologies, including (as examples only) for wind power, water power, photovoltaic, solar thermal, geothermal power, hydrogen power, biomass power, biofuel power, and fuel cells; and (3) advanced energy technologies, including transformational, breakthrough energy technologies in a variety of technical areas that have the potential to lead to revolutionary advances in the marketplace, including (as examples only) projects for advanced components and materials.

To better meet the objectives of Bayh-Dole, which include the goal of promoting commercialization of inventions by United States industry and labor, DOE proposes the use of U.S. Manufacturing Plans in funding agreements that support research, development, and demonstration of energy efficiency, renewable energy, and advanced energy technologies. The U.S. Manufacturing Plans consist of commitments proposed by applicants in response to funding opportunity announcements (FOAs), would be used by DOE during its evaluation and selection process, and would be formally incorporated into funding agreements following award negotiations. DOE may require the submission of U.S. Manufacturing Plans by all types of applicants, including large businesses, small businesses, and non-profit organizations. Once incorporated into a funding agreement, U.S. Manufacturing Plans may be enforced, among other possible remedies, through forfeiture of rights to subject inventions. Except for the U.S.



Manufacturing Plans and the enforcement mechanism, the patent rights granted to certain funding recipients under Bayh-Dole remain the same. In accordance with 37 C.F.R. 401.3(e), DOE makes the following determination of exceptional circumstances, along with the supporting statement of facts and analysis.

I. *The patent rights provided by Bayh-Dole may be modified to better promote the objectives of the Act when an agency determines that “exceptional circumstances” exist.*

a. *Bayh-Dole provides a standard set of patent rights to recipients of federal funds under a funding agreement.*

Rights to inventions that contractors, subcontractors, as well as recipients and sub-recipients of grants and cooperative agreements (“funding recipients”) conceive or first actually reduce to practice in performance of work under a funding agreement (“subject inventions”) are governed by Bayh-Dole and the federal regulations that implement Bayh-Dole.¹ A “funding agreement” is “any contract, grant, or cooperative agreement entered into by any Federal agency . . . and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.”²

Bayh-Dole allows certain non-profit organizations and domestic small businesses who are recipients of a funding agreement (“Bayh-Dole entities”) to elect title to their subject inventions subject to limited government rights, and further provides that the recipients must comply with certain disclosure, patent prosecution, and other requirements.³ In order to comply with Bayh-Dole, Federal agencies are required to use a standard patent rights clause for funding agreements with Bayh-Dole entities.⁴

b. *Standard patent rights under Bayh-Dole may be modified when “exceptional circumstances” exist and a modification would better promote the Act’s objectives.*

A Federal agency may restrict, eliminate, or otherwise modify rights provided to Bayh-Dole entities and implemented through the standard patent rights clause in “exceptional circumstances” when the Federal agency determines that a restriction, elimination, or modification of the rights and requirements provided by Bayh-Dole would better promote the

¹ 35 U.S.C. §§ 200-212; 37 C.F.R. Part 401.

² 35 U.S.C. § 201 (b).

³ Bayh-Dole does not provide large business recipients the right to elect title to subject inventions under DOE statutory authorities. 42 U.S.C. §§ 2182 and 5908. Bayh-Dole also does not apply to Technology Investment Agreements, under DOE’s Other Transactions Authority. 42 U.S.C. § 7256.

⁴ 37 C.F.R. § 401.3(a).

Act's objectives.⁵ The degree or scope of the modification should only be to the extent necessary to address the exceptional circumstances.⁶

- II. *Promoting domestic manufacture of products derived from federally-funded research is a primary objective of Bayh-Dole.*

A fundamental objective of Bayh-Dole is to promote U.S. manufacturing by encouraging the domestic manufacture of products derived from federally-funded research. Among the listed objectives of Bayh-Dole is "to promote the commercialization and public availability of inventions made in the United States by United States industry and labor."⁷

Bayh-Dole was enacted in 1980, in part, to address a growing concern regarding the ability of U.S. manufacturing to compete in an increasingly globalized marketplace. The House Report filed by the Judiciary Committee when Bayh-Dole was presented to Congress identified the need for legislation to address the "failure of American industry to keep pace with the increased productivity of foreign competitors."⁸ Bayh-Dole's passage was spurred in part by the President's Advisory Committee on Industrial Innovation, convened in 1978 to study the possibilities for encouraging increased productivity in the United States. Chief among the recommendations of the committee was a legislative proposal to promote industrial innovation through the commercial manufacture of federally-funded technologies. The legislative proposal led to Bayh-Dole.⁹

- III. *DOE has determined that exceptional circumstances exist because Bayh-Dole's objective of promoting U.S. manufacturing of federally-funded research is not fully being met with respect to energy efficiency, renewable energy, and advanced energy technologies.*

The current state of domestic manufacturing for energy efficiency, renewable energy manufacturing, and advanced energy technologies makes clear that the objective of promoting U.S. manufacture of U.S. inventions has not been adequately achieved.

⁵ 35 U.S.C. § 202(a)(ii); 37 C.F.R. § 401.3(a).

⁶ 37 C.F.R. § 401.3(b).

⁷ 35 U.S.C. § 200.

⁸ H.R. REP. 96-1307, 1, 1980 U.S.C.C.A.N. 6460, 6460 ("Need for the Legislation: Many analysts of the U.S. economy have warned that the roots of the current recession lie in a longer term economic malaise which arises out of a failure of American industry to keep pace with the increased productivity of foreign competitors.").

⁹ *Id.* at 6462. See U.S. DEPT. OF COMMERCE, ADVISORY COMMITTEE ON INDUSTRIAL INNOVATION: FINAL REPORT (Sept. 1979).

- a. *The U.S. has made significant investments in energy efficiency, renewable energy, and advanced energy technologies through DOE.*

The United States is a leader in the research and development of energy efficiency, renewable energy, and advanced energy technologies. America's leadership in research and development has been maintained in part due to DOE's significant and strategic investments in these types of technologies. The investments are made primarily through two DOE organizations: (1) the Office of Energy Efficiency and Renewable Energy (EERE) and (2) the Advanced Research Projects Agency-Energy (ARPA-E).

EERE works to strengthen the United States' energy security, environmental quality, and economic vitality in public-private partnerships. It supports this goal through (1) enhancing energy efficiency and productivity; and (2) bringing clean, reliable and affordable energy technologies to the marketplace. EERE partners with business, industry, universities, national laboratories, consumers, federal energy managers, inventors, states, and tribes to research, develop, and advance energy efficiency and renewable energy technologies. EERE funds R&D in programs that include building technologies, advanced manufacturing, vehicle technologies, weatherization technologies, bio-energy technologies, fuel cell technologies, geothermal technologies, solar energy technologies, and wind and water power technologies. EERE programs are focused on developing next-generation energy efficiency and renewable energy technologies and lowering the associated cost so that these technologies are broadly adopted and used across the United States. EERE has invested \$28.8 billion in energy efficiency and renewable energy technologies over the last ten years.

ARPA-E is dedicated to advancing energy technologies that have the potential to be transformational in the marketplace. ARPA-E works to identify high-risk, high-reward technical areas of interest to advance the agency's three mission areas: to enhance our nation's economic security, enhance our nation's energy security, and reduce energy-related emissions. ARPA-E enters into funding agreements with businesses, non-profit research organizations, universities, and national laboratories to research, develop and advance energy technologies that industry and other government programs are not likely to support because of technical and financial uncertainty.

In its first four years of operation, ARPA-E has invested more than \$777 million in advanced energy technologies, including approximately 285 research and development projects selected under 14 targeted FOAs and two open FOAs. In addition, ARPA-E has undertaken robust technology transfer and outreach activities to maximize the return on taxpayer investment through ARPA-E-funded technologies meeting their full commercial potential. Critical success in ARPA-E projects has spurred millions of dollars in follow-on private-sector funding, and a number of ARPA-E awardees have formed start-up companies as a result of ARPA-E funding.

- b. *Despite DOE's significant investment in energy efficiency, renewable energy, and advanced energy technologies research, development, and deployment, U.S. clean energy manufacturing lags behind other nations.*

Notwithstanding its leadership in research, development, and deployment of energy efficiency, renewable energy, and advanced energy technologies, the U.S. lags behind other nations in the manufacturing of those technologies. For example, China has 711 commissioned renewable energy manufacturing plants, five times as many as the U.S.¹⁰ China has an additional 13 partially commissioned plants and 122 under construction, for a total of 60% of all renewable energy plants on record.¹¹ The U.S. has only an additional 5 partially commissioned plants and 18 under construction.¹² More particularly, in the field of solar technologies, China currently has 523 fully commissioned solar manufacturing plants (44% of world total) and Germany has 96 (8% of world total), while the US has 87 (7% of world total).¹³ In the area of wind power technology, China has 109 wind manufacturing plants, or 41% of the world total.¹⁴ India has 34 wind manufacturing plants, or 14% of the world's total.¹⁵ The U.S. has only 23 plants, or 10% of the world total.¹⁶ According to consulting firm MAKE Consulting, U.S. manufacturing capacity to produce wind turbine components is insufficient, in many cases, even to keep up with U.S. demand, much less demand in foreign markets.¹⁷

- c. *Congress has expressly recognized the need to improve the level of U.S. manufacturing from DOE's investments in energy efficiency, renewable energy, and advanced energy technologies.*

In the accompanying House Report for the 2013 Energy and Water Appropriations Bill, the Committee on Appropriations identified the specific need for DOE to take a leadership role in improving U.S. manufacturing and domestic intellectual property retention:

The Department's research and development efforts yield several thousand patents and licenses each year, and taxpayers expect their support to result in commercialized technologies that benefit both American consumers and American industry. This expectation is not met when intellectual property that

¹⁰ *Industry Intelligence*, BLOOMBERG NEW ENERGY FINANCE, <http://www.bnef.com/> (last visited Feb. 12, 2013).

¹¹ *Id.*

¹² *Id.*

¹³ Bloomberg New Energy Finance, *supra* note 10.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Whitehouse.gov "Promoting Clean, Renewable Energy: Investments in Wind and Solar" 2010 <http://www.whitehouse.gov/recovery/innovations/clean-renewable-energy#19>

was developed with public funding is commercialized only by foreign manufacturers. The Committee believes that intellectual property policies offer substantial opportunities to encourage domestic manufacturing without obstructing commercial efficiency, eroding the value of intellectual property, or under-mining free trade. The technology transfer efforts of the Department should support domestic manufacturing wherever possible and the Department must take proactive steps to ensure taxpayer-funded research and development result in domestic jobs and revenues.¹⁸

The Committee requested that DOE examine what authorities are available to control intellectual property, specifically including the Bayh-Dole Act.¹⁹

Congress has also emphasized the importance of U.S. manufacturing through the authorizing statute for ARPA-E. Specifically, Congress established ARPA-E through the passage of the America Competes Act of 2007 and, among other things, charged ARPA-E with accelerating “the research and development of manufacturing processes for novel energy technologies.”²⁰ As a reflection of Congress’s focus on U.S. manufacturing, ARPA-E responsibility regarding research and development of manufacturing was modified in the America Competes Reauthorization Act of 2010 to state the following: “research and development of advanced manufacturing process and technologies for the *domestic manufacturing* of novel energy technologies.” (emphasis added)²¹

It is critical that energy efficiency, renewable energy, and advanced energy technologies funded by DOE support manufacturing in the United States, particularly in view of the necessity of creating and maintaining jobs, including manufacturing jobs, in the U.S. The objectives of DOE’s research and development programs are to decrease the dependence of the U.S. on foreign energy supplies, enhance U.S. economic and energy security, increase the export of renewable generation equipment from the U.S., and ensure that the United States maintains a technological lead in developing and deploying next-generation energy technologies.²² A strong and vibrant domestic manufacturing base is needed for these objectives to be met. If the U.S. cannot maintain a manufacturing base for energy efficiency, renewable energy, and advanced energy technologies then it will remain dependent on foreign energy supplies and fail to achieve economic, energy, and national security.

¹⁸ H.R. Rep. No. 112-462 (May 2, 2012) at 81.

¹⁹ *Id.* at 82.

²⁰ America COMPETES Act, Pub. L. 110-69, § 5012 (2007).

²¹ America COMPETES Reauthorization Act of 2010, Pub. L. 111-358, § 904 (2010).

²² 42 U.S.C. § 16231(a).

IV. *EERE and ARPA-E will implement U.S. Manufacturing Plans to further promote the U.S. manufacture of inventions resulting from Federally-funded research.*

a. *U.S. Manufacturing Plans may be required under a FOA and may be used as a basis for selection.*

Depending on the nature of the FOA, EERE and ARPA-E may require a U.S. Manufacturing Plan from each applicant of the FOA as part of its application. The U.S. Manufacturing Plan will represent the applicant's measurable commitment to support U.S. manufacturing of the technologies related to its EERE or ARPA-E funding agreement. The Plans shall apply equally to all types of applicants, including large businesses, small businesses, and non-profit organizations. Once incorporated into a funding agreement, the U.S. Manufacturing Plan will provide that it may be enforced, among other possible remedies, through forfeiture of rights to subject inventions. Except for the U.S. Manufacturing Plan proposed by the applicant and the enforcement mechanism, the patent rights of funding recipients granted by Bayh-Dole remain the same.

The nature and specificity of the applicants' U.S. Manufacturing Plans will vary based on the FOA and the program issuing the FOA. A higher level of specificity may be required in the U.S. Manufacturing Plans for technologies at higher technology readiness levels due to the greater certainty surrounding the commercialization of these technologies. U.S. Manufacturing Plans submitted in response to FOAs targeting technologies at high technology readiness levels or demonstration activities should include specific commitments to manufacturing in the U.S. For example, the U.S. Manufacturing Plan may specify products related to the funding agreement that will be manufactured in the U.S. or may identify investments in U.S. facilities to support product manufacture. U.S. Manufacturing Plans submitted in response to FOAs directed at technologies at lower technology readiness levels may have fewer specific manufacturing details and may focus more on licensing and other strategies to promote U.S. manufacturing.

The weight given to the U.S. Manufacturing Plans during the review and selection process likely will also vary based on the particular FOA and may be part of the evaluation or merit criteria. For example, the U.S. Manufacturing Plans may constitute 30% of the overall merit review score of the proposals. Alternatively, the U.S. Manufacturing Plans may be treated as a qualitative program policy factor, thereby allowing the selecting official to give preference to applications based on the U.S. Manufacturing Plans. FOAs directed to technologies at high technology readiness levels or demonstration type activities may require greater consideration of applicants' U.S. Manufacturing Plans.

Following selection and award negotiations, the U.S. Manufacturing Plan will be incorporated into the funding agreement. The funding agreement may further require that the

funding recipient submit annual reports to DOE (including after expiration of the funding period) to demonstrate compliance with the U.S. Manufacturing Plan.

The funding agreement terms and conditions will further provide for the remedies upon breach of the U.S. Manufacturing Plan. Individual FOAs, for example, may specify remedies such as repayment (including repayment with interest) of the DOE funding received under the funding agreement. Remedies may also include a loss of all rights to subject inventions by the funding recipient, including title reverting back to DOE if the funding recipient had title to the subject inventions.

b. The standard patent rights clause will be modified to allow U.S. Manufacturing Plans to be enforceable and to serve as a basis for selection.

To the extent that a U.S. Manufacturing Plan is connected to subject inventions or that the remedy for a breach of a U.S. Manufacturing Plan is connected to subject inventions (e.g., title reverts back to DOE), the standard patent rights clause for Bayh-Dole entities will be modified accordingly. The modification would be necessary to implement and enforce the U.S. Manufacturing Plan proposed by the Bayh-Dole entity and was in part the purpose for selecting the Bayh-Dole entity's proposal.

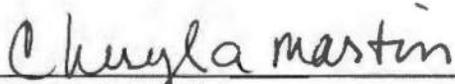
The funding recipient, including any Bayh-Dole entity, may request a waiver or modification of the U.S. Manufacturing Plan from DOE upon a satisfactory showing that the original U.S. Manufacturing Plan is no longer economically feasible and where the funding recipient can demonstrate an alternate net benefit to the U.S. economy notwithstanding the requested waiver or modification.

V. *Conclusion*

EERE and ARPA-E have determined that exceptional circumstances exist for energy efficiency, renewable energy, and advanced energy technologies. The U.S. Manufacturing Plan strategy described herein would better promote the objectives of Bayh-Dole by providing stronger support to U.S. manufacturing. Moreover, DOE is not imposing additional restrictions, requirements, or modifications from the standard patent rights clause beyond what is necessary to address the exceptional circumstances.

Any Bayh-Dole entity affected by this determination of exceptional circumstances has the right, and will be informed of that right, to appeal it.²³

Approved:  _____ Date: 09/05/13
DAVID DANIELSON
ASSISTANT SECRETARY
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY

Approved:  _____ Date: 9/9/13
CHERYL MARTIN
DEPUTY DIRECTOR
FOR ADVANCED RESEARCH PROJECTS AGENCY-ENERGY

Approved:  _____ Date: Sept 11, 2013
GENA E. CADIEUX
DEPUTY GENERAL COUNSEL
FOR TECHNOLOGY TRANSFER AND PROCUREMENT

²³ See 35 U.S.C. § 202(b)(4); 37 C.F.R. § 401.4.



Software Acquisition Questionnaire

I. VENDOR INFORMATION

Vendor Name:

Software/Product/Service Name:

Software/Product/Service Format (Check all that apply and explain):

On-premise perpetual software license. Provide any additional info:

SaaS (Software-as-a-Service) Provide any additional info:

Other – Please Describe

II. SOFTWARE AND SYSTEMS

a. General

1. ADA Compliance. ADA Law Accessibility & Compliance – Indicate how software is or will meet the Priority 1 checkpoints of the Web Content Accessibility Guidelines 1.0 (<https://www.w3.org/WAI/>) outlined by the W3C. In the event that a particular page or feature of your application is not WCAG Level 1.0 compliant, explain how you will provide an alternative, compliant page. Indicate if current application compliant with U.S. Section 508 (29 U.S.C. '794d) (See <https://www.section508.gov/test>). Provide a version of each Code you host for Disability Access, accessible via your mobile site. This version of the code should contain no frames and be mobile friendly for access from any modern smartphone or tablet running iOS, Android, or Windows. Vendor provides a sample ADA/Mobile Link.

2. Administrative Privileges. Does the application require local administrative privileges to the device it is running on? If so, please explain.

3. Application Security and Architecture. Please explain your approach to application security. For example, do you follow practices set forth by the SANS Institute, Securing Web Application Technologies <https://www.sans.org/cloud-security/securing-web-application-technologies/> and the practices of Open Web Application Security Project www.owasp.org?

4. Branding. What options do we have to add our own styles, colors, logo, wordmarks, etc.? If this is SaaS, please explain our options to brand the URL as cityofmadison.com?

5. Browser Support. Indicate the architecture used to develop the application. Indicate if all content is rendered in standard HTML5 and is viewable in all modern browsers. Please indicate any browser restrictions, including Microsoft Edge, and the preferred browser(s) and version(s) recommended for best user experience.

6. Certificates and Secure Protocols. Are there any security certificates required, such as SSL? What levels of SSL or TLS are required and minimally supported?

7. Client Footprint. Does this software require installation of anything on client workstations? If so, please explain. What are the recommended workstation requirements such as ram, storage, processing power, etc.?

8. Data Privacy. Please explain how you manage protecting Personally Identifiable Information (PII) as defined in Wis. Stat. § 19.62(5) and other confidential information in your application.

9. Identity and Permissions Management. Please describe how identity management is handled. Does the application provide for integration with the City's Active Directory system? How are system permissions managed? Can AD groups be leveraged – please explain and be specific. Are proper controls in place to prevent direct access to the database?

10. Internet Access. For either City-hosted or SaaS solutions, are there minimum internet bandwidth requirements that end-users should have for the best user experience?

11. Legacy Data. If applicable. Please describe your method to convert data from legacy system(s).

12. Mobile Device Support. Please describe what mobile devices your application supports. Please describe what the connectivity requirements are? How does your system operate in areas without connectivity to our network or the internet?

13. Multilingual Support. Please describe the ability of your software to operate in a multilingual environment. For example, how are translations for field labels, error messages, confirmation emails, report headings, and the like handled? What languages are supported? How do users

specify which language they would prefer to use? Do you accept special characters and accented characters to be entered into forms and fields?

14. Open Data. Please explain your support for Open Data Standards found at <http://project-open-data.github.io>. Do you have experience interfacing with ESRI's Open Data portal?

15. Personalization. If this system is collecting names and other demographic information, please let us know to what level of granularity is the information collected? What flexibility does this system offer for gender identity? See the City's Gender-Inclusive Language Style Guide at <https://www.cityofmadison.com/mayor/apm/hr/APM2-52Attach2.pdf>. How do you manage name changes, gender changes, and updates to other demographic information? Can individuals manage their own profile?

16. Personal Privacy. We sometimes have individuals that qualify for keeping their information private so that even their names are excluded or redacted in public records requests. Other times we give individuals the ability to self opt-out. Please indicate how your system could handle these scenarios.

17. Records Compliance and Data Access. Please indicate how access to data will be available to comply with Wisconsin open records laws. Do we have the ability to apply retention and disposition schedules to the data within the application? If this is Software-as-a-Service, how does the City ensure all of our data is purged from your system according to the data/records retention schedule or upon contract termination? Will we have unfettered access to our data that allows us to download and store it on our premises, and will there be additional costs to access the data for these purposes? Can we use our own reporting tools such as SSRS? Does the application have published API's and/or web services available for us to use?

18. Software Modifications. Are you willing to make software modifications?

19. Third Party Software. Fully describe any third party software that will be needed for this system, and how you manage licensing, maintenance, and support for those.

b. Special Cases

1. Financial Reporting and Data Sharing. Please explain your experience in providing GASB-34 compliant financial reporting and data sharing with Government oriented financial software. Do you have any experience interfacing with [Munis](#)?

2. HIPAA Compliance. If this application is involved in collecting or processing protected health information, please provide proof of a HIPAA audit conducted by an independent auditor against the OCR HIPAA Audit Protocol.

3. What would your requirements be for the format of that data?

4. PCI Compliance. If this application involved collecting or processing any type of online payments or financial transactions, please provide a PCI DSS Attestation of Compliance from within the past two year, and proof of registry on the VISA Global Registry of Service Providers.

5. Spatial Data. If this application is managing or interacting with spatial data, the City of Madison used ESRI-based GIS software for managing spatial data. Please explain your experience interfacing with ESRI software.

c. Support and Upgrades

1. Fully explain when support is available. Include what hours are included in your maintenance agreement as well as what is available as extended service.

2. Describe your levels of severity for support calls and what your typical response times are for each level of severity.

3. Describe your handling of bugs in your software and subsequent fixes for these bugs.

4. If you allow modifications, how do you support those modifications going forward? Are they included in new releases?

5. How are new releases and enhancements developed and notification of availability made to your customers.

6. How often do you provide product upgrades, and are the costs of upgrades included in the annual maintenance?

7. Describe a typical upgrade process, including the length of time expected and if system downtime is expected.

8. Is source code provided with your software? If not fully explain what provisions are made for the source code if your company goes out of business.

9. Do you have a user group and/or an annual conference?

d. Surveillance Technology

Surveillance Data means any electronic data collected, captured, recorded, retained, processed, intercepted, analyzed, or shared by Surveillance Technology

Surveillance Technology means any hardware, software, electronic device, or system utilizing an electronic device, owned by the City or under contract with the City, designed, or primarily intended, to collect, retain, process, or share audio, electronic, visual, location, thermal, biometric, olfactory, or other personally identifiable information of members of the public for the purpose of surveillance. Surveillance Technology includes, but is not limited to: cell site simulators; automatic license plate readers; gunshot detection systems; facial recognition software; gait analysis software; video cameras that record audio or video and can transmit or be remotely accessed; and unmanned aircraft systems equipped with remote video capabilities. Surveillance Technology does not include: office hardware, such as TVs, computers, credit card machines, copy machines, telephones and printers; video conferencing equipment, cell phones, cameras, and video cameras not used for surveillance and operated manually; computers, software, hardware or devices used to monitor *employees* or to monitor non-public areas in city buildings; and emergency medical rescue equipment. See Madison General Ordinance Sec. 23.63(2) for a complete list of items that are not considered Surveillance Technology.

1. Will the Surveillance Data be shared with another entity? If so, is there a data sharing agreement to share the surveillance data with the other entity?

2. Will you (the vendor) be hosting the Surveillance Data? If so, please explain.

3. What access, if any, will you have to our Surveillance Data? Please explain.

III. HOSTING

a. Self-Hosting Requirements (Hosted by the City)

The City may, at its option if available, choose to host the application ourselves. Please:

- 1. What servers are recommended? For example, do you recommend separate application, web, and database servers?

- 2. Minimum server requirements. Cores, storage, ram, etc.

- 3. Do you support VMWare environments?

- 4. What DBMS is recommended, and what levels and versions?

- 5. If MS-SQL is supported, do you support Availability Groups?

- 6. Will your application run under a load balancer?

- 7. Is network attached storage supported?

- 8. What would the estimated disk storage requirements be?

- 9. Please list all software components that the City will need to track to ensure system security, e.g., your system uses Java, .Net, C#, ColdFusion, Drupal, etc.

- 10. Do you have an installation and/or administrator guide? If so, please attach document(s).

b. Hosting Data Center Criteria (Hosted by Vendor or a third-party data center)

The City may, at its option if available, choose to have you host this application. Please describe:

- 1. Data Center. Will you self-host the application or use third-party data center(s)? If using a third party data center please identify the data center (s):

- 2. Antivirus Protection. Please indicate the antivirus software being used and how it is implemented.

- 3. Data Access. Please explain who will have access to what data, and when. Is explicit authorization required for access to our production environment? What about any data stored for your purposes, is it purged as soon as it's no longer required?

- 4. Data and Application Backups. Please explain how backups of data and applications are performed and the backup policies that are in place. Please indicate your method for routinely testing your backups.

- 5. Data Encryption. Is data in your platform encrypted both in transit (while it's moving between users and servers) and at rest (when it's stored in the cloud)? Please explain your encryption protocols.

- 6. Data Redundancy. Please explain how data redundancy is provided.

- 7. Incident Response. Please describe how you classify and incident, and what your incident response plan is.

- 8. Internet Stability – Geographic Redundancy. Does the vendor house data in a secure SSAE 18 and PCI compliant data center? Indicate who owns and operates the data center(s). Outline the features of the datacenter, including redundant Internet providers, redundant power and cooling, and secure biometric access to the physical facility. Indicate how systems are backed up and synchronized between one or more other datacenters, and their geographic locations to provide for full geographic redundancy should one of the sites become inaccessible.

- 9. Logging. What types of information about my environment would be logged, and how long are logs available? Please explain your logging protocols.

10. Penetration Tests. Penetration tests, also known as pen tests, are simulated attacks on a system. They are performed by authorized experts to evaluate that system's security and identify vulnerabilities, making them an important component of a proactive cybersecurity strategy. Please describe how often you perform pen tests.

11. Separation of Systems. Please describe how your environment provides for separation of instances so that corruption of one instance or client will not affect the City of Madison. Please describe your practices to keep production environments isolated from test and development.

12. Server and Software Patching. Please provide your policy or documentation that shows the methods you use to ensure your hardware and software remains patched and up-to-date.

13. Data Center Certifications. Please provide documentation that shows the data centers used to support this application meet the following certifications:

SSAE 18

The Statement on Standards for Attestation Engagements No. 18, establish requirements and provide application guidance to auditors for performing and reporting on examination, review, and agreed-upon procedures engagements, including Service Organization Controls (SOC) attestations.

- Type 1 – A data center's description and assertion of controls, as reported by the company.
- Type 2 – Auditors test the accuracy of the controls and the implementation and effectiveness of controls over a specified period of time.

SOC 1

This set of Service Organization Controls reports, developed by the AICPA, measures the controls of a data center as relevant to financial reporting.

SOC 2

This report and audit is completely different from the previous. SOC 2 measures controls specifically related to IT and data center service providers. The five controls are security, availability, processing integrity (ensuring system accuracy, completion and authorization), confidentiality and privacy. There are two types:

- Type 1 – A data center's system and suitability of its design of controls, as reported by the company.
- Type 2 – Includes everything in Type 1, with the addition of verification of an auditor's opinion on the operating effectiveness of the controls.

SOC 3

This report includes the auditor's opinion of SOC 2 components with an additional seal of approval to be used on websites and other documents. The report is less detailed and technical than a SOC 2 report.

VI. TERMS AND CONDITIONS

- a. Fully describe licensing or subscription terms and conditions and how licenses or subscriptions are structured (e.g. named user, concurrent users, etc.). Attach a copy of any **required and applicable** license agreements, EULAs, Terms of Use, as applicable for the solution proposed. When applicable please describe your licensing model – e.g. perpetual, subscription based, named users, concurrent users, etc.

- b. Fully describe terms and conditions of your software support/maintenance program. Please include a copy of your standard agreement(s) for support and maintenance, where applicable, or explain where maintenance and support are described for a SaaS solution.

- c. SLA- Service Level Agreement (uptime guarantee) for SaaS, hosted solutions, data centers, etc. Please attach or link a copy of all relevant SLA document for the proposed solution.

V. TRAINING

- a. Fully describe all training that your company will provide, include the following information.

- 1. End user training; class size, length of class.

- 2. System administration training; class size, length of class.

- 3. Application support training.

- 4. Any custom reports tools training.

- 5. Any other training you deem necessary for use of your software.

- 6. Explain where the training is to be held, and who will be providing it.

- 7. Do you have any online training courses available? If yes, fully describe what is available.

Appendix D: Qualification Questions

Please select either "Yes" or "No" for each question.

1. Does your team supporting this EV Charger Management system have experience performing the following tasks on real-world customer installations:
 - a. Integration of your solution with an Energy Management and Information System
Yes_____ No_____
 - b. Development of algorithms for EV managed charging capabilities (i.e. load shed, load optimization, charge prioritization, tariff optimization, and solar charging)
Yes_____ No_____
 - c. Programming those algorithms into controls
Yes_____ No_____

2. Has your EV Charger Management system been installed and accepted by a customer?
Yes_____ No_____

3. Can your EV Charger Management system currently communicate via OpenADR? Also, list any other external signals (IEEE 2030.5, OCCP, OSCP, APIs) you are able to take as input.
Yes_____ No_____

Appendix D: Qualification Questions

4. For each required capability below, state whether your solution complies. Capabilities apply to all buildings unless indicated. Required capabilities will be needed within the project timeline discussed above.

Capabilities	Description	Complies (Yes or No)
Load Shed (ADR)	Capable of EV load shed during an automated demand response event, either through receiving the ADR signal directly from the utility or via the EMIS.	
Load Optimization	Manages power to each charger, charger group, or site below a pre-defined limit.	
Charge Prioritization	Setup a priority logic to distribute power among charging stations. Identify and prioritize business-critical EV charging.	
Tariff Optimization	Automate charging based on electricity rates (energy and demand charges) to maximize fuel savings while considering fleet need (departure time and energy needed for each EV).	
	Can be integrated with building meter for demand limiting.	
Solar Charging	Maximizes solar charging while respecting fleet charging needs. Optimizes EV charging, predicting solar and computing the best charging schedule to use it.	
Real-Time Charging Data	Full visibility with real-time monitoring and role-based alerts, real-time visibility of EV station status and health, telematics.	
Restricted Access	Set vehicle access groups, track users by RFID (by vehicle, synced with VIN) or driver ID.	
Billing	Setup groups of users with different charging billing rates and permissions.	
Network Resources	Cloud-based, via cellular or wifi	