

COOPERATIVE INTERGOVERNMENTAL SOFTWARE LICENSE AGREEMENT

Between the City of Milwaukee and the City of Wauwatosa

RE: Utilization of the City of Milwaukee's Labor Compliance Reporting Software

I. Purpose and Intent

1. The purpose of this Cooperative Intergovernmental Software License Agreement ("Agreement") is to establish the terms and conditions under which the City of Wauwatosa ("Licensee") will license Labor Compliance Reporting software ("LCR") from the City of Milwaukee ("Licensor") for a period of six years.
2. The parties enter into this Agreement through their collective pursuit of workforce development as a means to eliminate poverty, strengthen neighborhoods and serve as mechanism to share in the wealth created through economic development more broadly in the region. This Agreement also advances both parties' goals of city/suburban collaboration and local government innovation and efficiency.
3. LCR is a web-based tool built, owned, and utilized by Licensor to track payroll and socio-demographic information of the workforce hired by Licensor's private contractors and sub-contractors. Licensee will utilize LCR to track payroll and socio-demographic information of the workforce hired by Licensee involved in the construction of economic development projects receiving public support as required by Licensee's "Economic Development Procurement Inclusion" policy as further described herein (the "Purpose").
4. Licensee anticipates that this Agreement will save it an estimated 25-50% per project compared to its current expenses with a private third-party software company. That company was not willing to negotiate its pricing structure.
5. The Agreement is an intergovernmental cooperation agreement authorized by Wis. Stat. § 66.0301.

II. Term

This Agreement shall be effective from the date of the final signatures below, and shall continue for a period of six years, unless otherwise extended via written amendment to this Agreement or terminated in accordance with the terms set forth herein (collectively the "Term").

III. Access and Services Provided

1. Subject to and conditioned upon payment of Fees (as defined below) and compliance with all terms and conditions of this Agreement, Licensor grants Licensee a non-exclusive, non-transferable, revocable (as set forth herein) right to access and use LCR during the Term solely for the Purpose. In order to facilitate this license, Licensor agrees to provide Licensee's employees and contractors designated in writing by Licensee to Licensor via an email sent to webhelp@milwaukee.gov (the "Users") with access to LCR's online portal during the Term so that the Users may use LCR solely to fulfill the

Purpose. Licensee shall have no more than five Users at any given time unless otherwise agreed to in writing by Licensor.

2. In the event that Licensee experiences issues using LCR, Licensee shall email webhelp@milwaukee.gov for assistance. Licensee may also call Licensor at 414-286-2777 in addition to sending an email to webhelp@milwaukee.gov.
3. Licensor shall provide commercially reasonable training to Users in the effective use of LCR after execution of this Agreement. The training to be provided to Licensee shall be designed to allow the initial Users trained on the use of LCR to thereafter train other subsequent Users; therefore Licensor shall only be required to provide the training once.
4. Licensor may, in its sole discretion, make commercially reasonable updates to LCR from time to time including improvements, corrections of substantial defects in LCR, periodic maintenance releases, and technical support regarding the use of LCR or response to errors in LCR.
5. Licensor shall establish a process for Licensee to request software enhancements in accordance with Section VII of this Agreement.
6. LCR shall be reasonably accessible to Licensee except for (i) scheduled maintenance and required repairs; and (ii) any interruption due to causes beyond Licensor's control or which are not reasonably foreseeable by Licensor, including, but not limited to, interruption or failure of telecommunication or digital transmission links and internet slow-downs or failures or other force majeure events.
7. Nothing contained herein shall transfer any ownership rights over LCR to Licensee from Licensor. All rights to access or use LCR shall terminate upon the expiration or termination of this Agreement.

IV. Use Restrictions

1. Licensee shall not use LCR for any purpose beyond the scope of the access granted in this Agreement.
2. Licensee shall not and will not permit any third party to:
 - i. use LCR for any unlawful purpose or in any manner not permitted by this Agreement;
 - ii. use LCR in any manner which could damage, disable, overburden, or impair LCR or interfere with any other party's use and enjoyment of LCR;
 - iii. modify or change LCR;
 - iv. reverse engineer, decompile, decrypt, hack, emulate, exploit, disassemble or make any attempt to discover the source code relevant to LCR;
 - v. circumvent or bypass any technological protection measures in or relating to LCR;
 - vi. publish, copy, rent, lease, sell, license, sublicense, assign, transfer, export, import, distribute, or lend or otherwise make LCR available to any third party;
 - vii. access, monitor or copy any content or information of LCR other than any of the same owned by Licensee;
 - viii. remove any proprietary notices from LCR;
 - ix. use LCR in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of Licensor or any third party;

- x. access or use LCR for purposes of competitive analysis of LCR, the development, provision, or use of a competing software service or product or any other purpose that is to Licensor's detriment or commercial disadvantage; or
- xi. introduce malicious code. Malicious code includes, without limitation, any virus, malware or undocumented or hidden functionality or performance capability contained within electronic files, data, or software.

V. Licensee Obligations

1. Licensee is responsible for and must provide all required computer hardware, software and other services necessary to access LCR.
2. Licensee agrees to secure and protect LCR in a manner consistent with the maintenance of Licensor's rights and cause no harm to Licensor equipment, software, or processes used in connection with furnishing LCR and any entities from whom Licensor obtains network or web services.
3. LCR may require Users to obtain a user identification and password for access and use. Licensee shall ensure that Users use reasonable efforts, including reasonable security measures relating to access, to ensure that no unauthorized person, including any employee or contractor for any parent, subsidiaries, affiliated entities or third parties, gains access to LCR without Licensor's prior written consent. Licensee is solely responsible for maintaining the confidentiality of User identification, passwords and codes (collectively, "**User Information**") assigned to Users for any activity that occurs under any User's account as a result of Licensee or User's failing to keep User Information secure and confidential. Licensee shall promptly inform Licensor in writing via an email to webhelp@milwaukee.gov if any need to deactivate or replace any User Information due to security concerns arises. Licensor is not liable for any harm related to theft or disclosure of Licensee or any User's User Information or authorization to allow another person or entity to access and use LCR using Licensee or any User's User Information. Licensee agrees to notify Licensor immediately upon becoming aware of any unauthorized use of User Information. In the event of any unauthorized access or other reasonable threat to LCR by Licensee, any User, or any third party (whether or not caused by Licensee), Licensor shall be allowed to take any and all steps it reasonably determines are necessary or beneficial to take to protect LCR, Intellectual Property (as defined below), or any of Licensor's data or IT systems.
4. Licensee agrees to identify support staff who, to the maximum extent practicable, will be the primary source of IT communications under this Agreement from Licensee to Licensor.

VI. Costs and Payment Structure

1. Licensee agrees to pay Licensor the following fees for each development project utilizing LCR (the "Fees"):
 - i. \$5,000 per development project with a total development cost of less than \$100,000,000.

- ii. \$8,000 per development project with a total development cost of more than \$100,000,000 but less than \$200,000,000.
 - iii. For any development project with a total development cost of more than \$200,000,000, an additional \$3,000 per \$100,000,000 of additional development cost shall be charged to Licensee. This additional Fee shall not be prorated (i.e. the Fee for a \$200,000,001 project would be \$11,000 and the Fee for a \$275,000,000 would also be \$11,000).
2. Each phase of a multi-phase project will be assessed a Fee based on the development cost of each individual phase. A multi-phase project is one that has a separate construction timeline for each phase or each phase could stand-alone as a separate project.
3. Within 30 days of approval of a development for which Licensee shall utilize LCR by Licensee's common council and mayor, Licensee shall provide Licensor with a copy of the development agreement and legislative file approving such development via email to **ENTER HERE MARY**. Thereafter Licensor shall invoice Licensee in accordance with the Fee schedule set forth above.
4. Licensee shall pay all Fees within 30 days of receiving an invoice from Licensor. Licensee shall not utilize LCR for any developments until the Fee associated with such development is paid in full to Licensor. A monthly late fee of 1% interest shall accrue on any unpaid Fee or portion thereof not paid within 30 days of the invoice due date associated with such Fee. Interest shall accrue only on the unpaid principal balance of the Fee and shall not be compounded.
5. Licensor reserves the right to request renegotiation the Fee structure and amount if Licensee's economic development projects differ significantly in size, scope, or duration from its historical pattern over the five years preceding execution of this Agreement (as reasonably determined by Licensor) and Licensee agrees to reasonably cooperate in such renegotiation. Any updated Fee shall not go into place until 60 days after the initial request to update the Fee is made by Licensor and the new pricing would only affect projects not yet under construction. In the event that no new Fee can be agreed to, no new developments can be entered into LCR.

VII. Software Enhancements

1. Licensee may request enhancements to LCR by contacting webhelp@milwaukee.gov via electronic mail.
2. Licensor shall, in its sole discretion, determine whether to implement any enhancements requested by Licensee.
3. If, as determined by Licensor in its sole discretion, an enhancement requested by Licensee requires significant time and effort or is not deemed desirable or necessary for Licensor's purposes, Licensor may impose an additional Fee for such work, the amount of which shall be determined in Licensor's sole discretion based on the complexity of the requested enhancement. Licensor shall provide an estimate of any such additional Fees, which must be agreed upon in writing by Licensee and paid in full before Licensor shall commence work on such enhancement(s).

VIII. Data Security, Records, and Confidentiality

1. Both Parties agree to take reasonable measures to protect the confidentiality and security of any data shared within LCR. Each party shall be deemed to be the owner of its own data as further set forth below in Section IX.
2. Both Parties agree the other is bound by the Wisconsin Public Records Law, Wis. Stat. §19.21, et. seq. Pursuant to Wis. Stat. §19.36(3), either Party may be obligated to produce, to a third party, the records of the other Party that are “produced or collected” under this Agreement (“Records”). Irrespective of any other term of this the Parties are obligated to: (1) retain Records for seven years from the date of the Record’s creation, and (2) produce such Records where the Wisconsin Public Records Law requires production of the Records to a third (3rd) party in response to a public records request.
3. Licensor will not share Licensee’s project data with third parties without prior written consent, except as required by any applicable laws, rules, regulations, or court orders including but not limited to Wisconsin’s Public Records Law, Wis. Stat. §19.21, et. seq.

IX. DATA OWNERSHIP

1. **Licensor’s Intellectual Property.** At all times, LCR, including without limitation, the text, images, graphics, method of display and presentation, visual interfaces, user interfaces, photographs, copyrights, patents, trademarks, trade secrets, logos, sounds, music, artwork, computer code, and associated material and functionality contained therein (collectively “Intellectual Property”), shall remain the property of Licensor. Licensee acknowledges that LCR constitutes commercially valuable, proprietary products, the design and development of which reflect the effort of skilled development experts and the investment of considerable time and money by Licensor. Licensee further acknowledges that Licensor shall retain all right, title and interest in the Intellectual Property (including application development, business and technical methodologies, and implementation and business processes, used to develop or provide LCR), and any and all updates, enhancements, customizations, revisions, modifications, future releases and any other changes relating to the foregoing. Except for limited access and use rights granted pursuant to this Agreement, Licensee does not acquire any interest in LCR. Licensor reserves all rights not expressly granted to Licensee in this Agreement. Except for the limited rights expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Licensor or any third party, any intellectual property rights or other right, title, or interest in or to LCR.
2. **Licensee Data.** All information provided by Licensee, including, any technology, intellectual property, data, information, or material provided or submitted by Licensee or its Users in the course of using LCR shall be referred to as “Licensee Data”. Except as otherwise expressly provided for in this Agreement, all right, title, and interest in and to Licensee Data and results from processing Licensee Data are and shall remain Licensee’s property and no right, title, or interest in and to Licensee Data or the results from processing Licensee Data shall vest in Licensor. Licensee hereby irrevocably grants all such rights and permissions in or relating to Licensee Data as are necessary for Licensor to exercise its rights and perform its obligations hereunder including the right to fully view and audit any of Licensee Data on LCR to ensure all projects entered in LCR have been fully paid for in advance. Licensor will maintain commercially reasonable technical and security measures designed to prevent unauthorized disclosure of Licensee Data.

Licensor shall notify Licensee of any unauthorized use of Licensee Data, breach of security, or loss or theft of Licensee Data promptly upon discovery of such unauthorized use, breach, loss, or theft and shall take all commercially reasonable action for the protection of personal data and to mitigate such breach, loss, theft or unauthorized use.

X. Termination and Effect of Termination

1. Either Party may terminate this agreement with 90 days' written notice to the other Party.
2. If either Party fails to fulfill in a timely and proper manner any of its obligations or violates any of the provisions of this Agreement, the other Party shall have the right to terminate this Agreement. The Party wishing to terminate the Agreement hereunder shall notify the other Party of its intent to terminate by giving such Party written notice identifying the alleged breach of the Agreement and shall give the breaching Party 30 days to cure such deficiencies prior to termination. Neither Party shall be relieved of liability to the other for damages sustained by virtue of any breach of the Agreement, and both Parties shall retain their remedies under the law.
3. Upon termination, Licensee shall immediately discontinue use of LCR, and Licensor may, in its sole discretion, revoke all Users' access to LCR.
4. Upon request of Licensee no more than one year after the effective date of termination of this Agreement, Licensor will provide Licensee with an electronic data extract (in excel or .csv format) of all past and current projects within LCR.
5. If this Agreement is terminated early by either Party, Licensor will be paid all amounts due by Licensee under this Agreement as of the effective date of termination.
6. Sections **FILL IN** and any other section(s) which by its/their meaning is/are implied to survive termination shall continue in force and effect following the termination or expiration of this Agreement.

XI. Dispute Resolution

1. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The Parties agree that for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, jurisdiction and venue shall be in Milwaukee County, Wisconsin, for matters arising under state law or, should federal courts have jurisdiction, the eastern district of Wisconsin. The parties agree to submit themselves to the jurisdiction of said courts, to the exclusion of any other court that may have jurisdiction over such a dispute according to any other law.
2. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed to Licensor at:

City of Milwaukee

[INSERT]

Or Licensee at:

City of Wauwatosa
Attention: City Attorney
7725 West North Avenue
Wauwatosa, WI 53213

3. Nothing in this Agreement is meant to create or creates any rights, obligations, or benefits directly or indirectly to any party not a signatory of this Agreement.
4. It is recognized and acknowledged by Licensee that a breach of the covenants contained in this Agreement may cause irreparable damage to Licensor, the exact amount of which will be difficult or impossible to ascertain, and that the remedies at law for any such breach may be inadequate. Accordingly, Licensee agrees that in the event of a breach of this Agreement, in addition to any other remedy which may be available at law or in equity, the Licensor will be entitled to specific performance and injunctive relief without the requirement to post any bond.

XII. INDEMNIFICATION AND IP CLAIMS.

Licensee shall indemnify Licensor and its officers, agents and employees for all losses, damages, costs, expenses, judgments, accrued interest, liabilities, or decrees arising out of any claim, action in a court, or proceeding before an administrative agency that is brought against Licensor or any of its subcontractors, officers, agents, or employees for the acts or omissions of Licensee, any Users, or any of Licensee's subcontractors, officers, agents, or employees in whole or in part which are a breach of this Agreement, or for injury or damage caused by negligent, willful, or intentional acts or omissions of Licensee, any Users, or any of Licensee's subcontractors, its officers, agents or employees. Licensor will, at its sole option, decide whether to tender the defense of any claim, action in court, or proceeding before an administrative agency in which Licensee has a duty to indemnify to Licensee or Licensee's insurer and upon such tender it shall be the duty of Licensee and Licensee's insurer to defend such claim, action, or proceeding without cost or expense to Licensor or its officers, agents, or employees using counsel selected by Licensee or Licensee's insurer and approved by Licensor. Licensee shall not settle any claim, action in any court, or proceeding before an administrative agency relating to Licensor unless Licensor consents to the settlement in writing.

XIII. Liability and Warranty

1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND WHETHER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OR AS TO THE QUALITY, UTILITY OR PERFORMANCE OF LCR, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED. LICENSOR FURTHER MAKES NO WARRANTY THAT (i) LCR WILL MEET LICENSEE'S REQUIREMENTS, (ii) LCR WILL BE AVAILABLE, UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF LCR WILL BE ACCURATE OR RELIABLE, OR (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, DATA, OR OTHER

MATERIAL ACCESSED BY LICENSEE OR THE USERS THROUGH LCR WILL MEET LICENSEE'S EXPECTATIONS. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY LICENSEE FROM LICENSOR SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

2. IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) LOSS OF GOODWILL OR REPUTATION; IN EACH CASE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE AMOUNTS ACTUALLY PAID TO LICENSOR UNDER THE AGREEMENT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.
3. Through LCR, Licensee may have access to third-party applications, databases, directories, information, networks, products, programs, servers, services, software, systems, or websites, (collectively, "Third-Party Services"). Licensor has no control over such Third-Party Services and disclaims any and all responsibility and liability for the content, operation, or use of such Third-Party Services. All Third-Party Services are provided on an "as-is" basis, with no warranties of any kind.

XIV. Miscellaneous

1. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreements or understandings, whether written or oral, regarding the subject matter hereof including licensing LCR.
2. This Agreement may be amended only by a written agreement signed by authorized representatives of both Parties.
3. The Parties are independent contractors. Licensee and its officers, employees or agents are not employees of Licensor, nor are they entitled to any fringe benefits or any other benefits to which Licensor's employees are entitled to or are receiving. Licensor and its officers, employees or agents are not employees of Licensee, nor are they entitled to any fringe benefits or any other benefits to which Licensee's employees are entitled to or are receiving. Licensee and Licensor form no joint venture or partnership under this Agreement.
4. It is Licensor's policy not to discriminate against any qualified employee or qualified applicant for employment because of an individual's sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic

partnership, genetic identity, homelessness, familial status, or an individual's affiliation or perceived affiliation with any of these categories ("Protected Classes"). Pursuant to Milwaukee Code of Ordinances (MCO) Section 109-9 all of Licensor's contractors and their subcontractors employing any resident of the City of Milwaukee may not discriminate against any member of the Protected Classes, and such contractors must insert this clause into any subcontracts of subcontractors employing any resident of the City of Milwaukee. The parties do not intend that Licensee shall be a "contractor" as used in MCO Section 109-9.

5. If any term of this Agreement is, to any extent, held invalid or incapable of being enforced, such term shall be excluded only to the extent of such invalidity or unenforceability. All other terms hereof shall remain in full force and effect and, to the extent possible, any invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term as reasonably determined by Licensor. If such invalid or unenforceable term has a material and adverse effect on a party and a valid and enforceable replacement that comes closest to expressing the intention of such invalid or unenforceable term as reasonably determined by Licensor cannot be created, the party materially and adversely impacted shall be allowed to terminate the Agreement pursuant to Section X(2) of this Agreement.
6. Should any local, state or national regulatory authority having jurisdiction over either Party impose a valid and enforceable order upon such Party which has the effect of changing or superseding any term or condition of the Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, the Agreement shall remain in effect and be modified or terminated in the manner provided for by this Section.
7. Neither party shall be required to perform any term, condition or covenant of this Agreement to the extent such performance is delayed or prevented by labor difficulties, governmental orders, civil commotions, pandemics, acts of God, or other conditions or circumstances beyond either party's reasonable control. Licensor shall not be liable for interruptions caused by failure of equipment or services not provided by Licensor, failure of communications, power outages, or other interruptions not within Licensor's complete control, and Licensor shall not be liable for performance deficiencies caused or created by Licensee's equipment. Licensor shall not be liable if changes in operation, procedures, or LCR require modification or alteration of Licensee's equipment or otherwise render the same obsolete or otherwise affect its performance. The foregoing shall not excuse either party from the payment of any monies due pursuant to this Agreement.
8. Nothing in this Agreement shall be construed to waive any privilege, defense, or immunity to which either Party is entitled under common law, or federal, state, or local law; waiver of any of the foregoing may only be accomplished in writing by an individual with the authority to bind such Party.
9. Neither Party shall assign or transfer any license rights, duties, or interest in this Agreement in any manner without the written consent of the other Party.
10. The Agreement may be executed in counterparts, each of which shall be deemed an original. All counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date last written below.

City of Milwaukee

David Henke, Chief Information Officer

Date

Bill Christianson, Comptroller

Date

Approved as to form and execution:

Greg Kruse, Assistant City Attorney

Date

**City of Wauwatosa [As a five-year agreement
this needs common council approval]**

Dennis McBride, Mayor

Date

Steven Braatz, City Clerk

Date

John Ruggini, Finance Director

Date

Approved as to form and execution:

Alan R. Kesner, City Attorney

Date