

AN ORDINANCE APPROVING THE CONTRACT WITH CDW GOVERNMENT FOR THE PURCHASE OF A BACKUP APPLIANCE AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.

WHEREAS, the City of Branson desires to contract with CDW Government for the purchase of a backup appliance; and

WHEREAS, CDW Government has been recommended for approval by staff; and

WHEREAS, the Board of Aldermen desires to approve the contract.

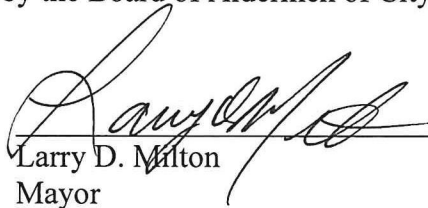
NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby approves the contract with CDW Government for the purchase of a backup appliance as specified in the related specifications and substantial conformity with the terms shown on Exhibit "1" attached in the amount not to exceed \$173,657.73 and incorporated by this reference as set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Administrator, and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 22nd day of August, 2023.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 26th day of September, 2023.


Larry D. Milton
Mayor

ATTEST:


Hillary Briand
City Clerk

APPROVED AS TO FORM:


City Attorney

Office Use Only

MASTER CONTRACT NUMBER:

C2023-0185

SERVICES CONTRACT

THIS CONTRACT made and entered into this date, _____, by and between the City of Branson, Missouri (the "City") and **CDW-G** ("Service Provider").

Witnesseth That:

WHEREAS, the City of Branson desires to engage the Service Provider to provide certain services hereafter more particularly described in **Exhibit A**; and

WHEREAS, the Service Provider made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal.

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Service Provider as follows:

1. **Scope Of Work.** The City agrees to engage the work of the Service Provider and the Service Provider agrees to provide the services and assume the responsibilities hereinafter set forth in **Exhibit A**.
2. **Addition to Work.** The City and the Service Provider may amend the scope of work set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 7B of this contract. Any amendments shall be in written form and prepared and approved by the appointed City Officials and countersigned by the Service Provider.
3. **Exchange of Data.** All information, data, and reports as are existing, available and necessary for the carrying out of the work, shall be furnished to the requesting party without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of work.
4. **Payment for Labor and Materials.** The Service Provider agrees and binds itself to secure and pay for all personnel, labor, materials and supplies required to perform the services called for under this contract by Service Provider. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Service Provider. All of the work required hereunder will be performed by the Service Provider or under Service Provider's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such work. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.
5. **Term.** The work of the Service Provider shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract, but in any event, all of the work required hereunder shall be completed by **March 1, 2024**.
6. **Costs not to Exceed.** The City is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Service Provider providing work hereunder shall be required to keep track of the amount of work performed under this contract at all times; and any work, materials, supplies or expenses in excess of the fixed sum shall not be eligible for payment. The Service Provider shall notify the City if Service Provider anticipates that the

CDW-G

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contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. The Service Provider shall establish a billing system showing the amount of money remaining on the contract which shall be shown in each monthly billing.

7. Payment.

A. Conditioned upon acceptable performance. The City agrees to pay the Service Provider in accordance with the terms set forth in **Exhibit B**, which shall constitute complete compensation for all work to be rendered under this contract; provided, that where payments are to be made periodically to Service Provider for work rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the work performed during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of work set forth in **Exhibit A**.

B. Total compensation not to exceed. It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Service Provider under the terms of this contract exceed the sum of **One Hundred Seventy-Three Thousand Six Hundred Fifty-Seven Dollars And Seventy-Three Cents (\$173,657.73)**, all of which is dependent upon budget appropriations.

8. Termination of Contract.

A. Termination for breach. Failure of the Service Provider to fulfill Service Provider's obligations under this contract in a timely and satisfactory manner in accordance with the schedule and description of work set forth in **Exhibit A** shall constitute a breach of the contract, and the City shall thereupon have the right to immediately terminate the contract. The City shall give written notice of termination to the Service Provider by one of three different means: Facsimile Transmission ("FAX") if Service Provider has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to the Service Provider; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Service Provider or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Service Provider under this contract shall at the option of the City become its property, and the Service Provider shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Service Provider shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Service Provider.

B. Right to terminate in the absence of breach. Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30) days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination, in the event of termination in the absence of breach.

C. Surviving Terms. Notwithstanding any provisions to the contrary, provisions pertaining to liability and indemnity shall survive the termination of this contract.

9. Conflicts. Any bidder or signee of this contract shall disclose any financial relationship (direct or indirect) to salaried officer, employee of the City or member of the City Board of

Aldermen in writing at the time of the execution of this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Service Provider covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of work to be performed under this contract. The Service Provider further covenants that in the performance of this contract no person having such interest shall be employed.

10. **Assignment.** The Service Provider shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Service Provider from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

11. **Performance.** It is understood by the parties that time is of the essence in this contract.

12. **Discrimination.** The Service Provider agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Service Provider or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

13. **General Independent Service Provider Clause.** This contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Service Provider will be an independent Service Provider and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Service Provider will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Service Provider's activities and responsibilities hereunder. The Service Provider agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, that this agreement shall not be construed as creating any joint employment relationship between the Service Provider and the City, and the City will not be liable for any obligation incurred by the Service Provider.

14. **City Benefits.** The Service Provider shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

15. **Liability and Indemnity.** The parties mutually agree to the following:

A. In no event shall the City be liable to the Service Provider for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid by the City under this

contract. All of the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

B. The Service Provider shall defend, indemnify, and hold the City harmless from and against all claims, losses, actions, causes of action, demands and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Service Provider arising out of or in any way connected with this contract. Service Provider further agrees to defend, indemnify and hold the City harmless from and against any claims, losses and liabilities arising out of the award of this contract to the Service Provider.

C. The Service Provider shall indemnify and hold the city harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

16. Bonds and Insurance. The Service Provider must have and maintain, at the Service Provider's expense, adequate liability insurance and bonds (if applicable) to satisfy statutory bonding requirements, of section 537.610.2 and 537.610.5 of the Missouri Revised Statutes to protect the City and the general public against any loss, damage and/or expense related to the Service Provider's performance under this contract. The insurance coverage shall include, but need not be limited to, the following coverage's in the amounts specified. Such insurance must indemnify the City to the fullest extent possible under the laws of the State of Missouri.

A. General Liability Insurance with a company authorized to do business in the State of Missouri with limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death) and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The City of Branson must be named as an additional insured.

B. Automobile Liability Insurance with a company authorized to do business in the State of Missouri having limits of liability not less than One Million Dollars (\$1,000,000.00) per occurrence for personal injuries (including death). The City of Branson must be named as an additional insured.

C. Workers' Compensation Insurance with a company authorized to do business in the State of Missouri having limits not less than One Million Dollars (\$1,000,000.00), including occupational disease provisions for all employees of the Service Provider(s) and Sub-Service Provider(s).

D. The Service Provider will require all Sub-Service Providers to provide and maintain like insurance as set forth above unless the Service Provider's policies extend to claims made against or growing out of operations of the Sub-Service Provider.

E. Written evidence of the required insurance coverage must be submitted before or upon award of the contract. Such policy(ies) shall name the City of Branson as additionally insured. Failure to maintain required insurance coverage shall be considered a breach of this contract.

F. Service Provider understands and agrees that the insurance required under the terms of the contract in no way precludes the Service Provider from carrying such other insurance as may be deemed necessary by the Service Provider for the operation of the Service Providers business or for the benefit of the Service Provider's employees.

G. Notwithstanding any other provision of the contract to the contrary, no insurance procured by the Service Provider shall be construed to constitute a waiver of any sovereign immunity as set forth in section 537.600 through 537.650 of the Missouri Revised Statutes, or any other governmental or official immunity, which is barred under said doctrines of sovereign, governmental or official immunity available to the City, its Board of Aldermen, salaried officers or employees, nor constitute waiver of any available defense. The Service Provider shall cause all policies of insurance related to the contract to be endorsed in accord to this subparagraph.

H. If this is a multi-year contract then the Service Provider shall further require the upper limits of coverage of such policies to be adjusted on an annual basis to be at least equal to the limits of liability set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes as amended from time to time.

I. Insurance Certificates. It is the sole responsibility of the Service Provider to provide the City with the most up-to-date insurance certificates and to keep them current throughout the term of the contract and for any renewal periods. Any failure to maintain insurance coverage shall not relieve any contractual responsibility, obligation or liability under the contract documents. Insurance Certificates must be faxed or mailed to the address provided.

17. **Notices.** All notices required or permitted herein under and required to be in writing may be given by FAX or by first class mail addressed to City and Service Provider at the addresses provided. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 4:30 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

18. **Jurisdiction.** This contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Taney County, Missouri.

19. **Missouri Immigration Law Affidavit.** After January 1, 2009, the service provider takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The service provider will provide with their bid specifications and bonding information a statement that the company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

☐ ____ If this box is checked, then the requirement for an Immigration Law Affidavit does not apply because the dollar value of the contract is less than the \$5,000 minimum.

20. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

21. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products

hereunder. Contractor affirmatively states that payment of all local, state and federal taxes and assessments owed by Contractor is current.

22. **Safety.** Contractor and subcontractors performing service for the City are required and shall comply with all applicable Occupational Safety and Health Administration (OSHA). All contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site.

23. **Severability.** If any term or provision of this agreement is held invalid or unenforceable, the remainder of this agreement will be considered valid and enforceable to the fullest extent permitted by law.

24. **Contact Information:** City of Branson
Attn: Contract Management
110 W Maddux St., Ste. 205
Branson, MO 65616
417-337-8522

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SERVICE PROVIDER:

DocuSigned by:
By: Anup Sreedharan 8/7/2023
11554A0EA2674F3...
(Signature) Date

CITY OF BRANSON, MISSOURI

Larry D. Milton Date
Mayor

ATTEST:

Hillary Briand Date
City Clerk

APPROVED AS TO FORM:

DocuSigned by:

Lindsey Kolisch 8/7/2023
6B9C8706804647A...
Interim City Attorney Date

Exhibit A

CDW Government LLC
230 N Milwaukee Ave
Vernon Hills, IL 60061

SCOPE OF WORK

Purpose: The service provider, CDW Government LLC shall provide Rubrik Backup Appliance and Software.. All specifications listed shall be considered as the minimum acceptable.

1. General Requirements:

1.1 The City has a requirement for as specified. **Pricing shall be per item.**

1.1f - Enterprise Edition 5 Year

Item	Desc	Qty
RS-BT-EE-PE-PP	Rubrik Enterprise Edition; per usable BETB; Premium support; prepay (5 Year)	60
RHA-6408S-01	r6408s Appliance, 4-node, 96TB raw HDD, 1.6TB SSD, SFP+ NIC	1
RA-PS-INST-ONST	Rubrik Professional Services, Onsite Installation and Configuration of up to 8 briks (32 nodes) per site, prepay	1
RCA-SFP-TSR-01	10G/1G Dual Rate SFP+ Transceiver, pack of 4	2
RS-HW-SVC-PE-S2	Support for R6000S-2 hardware, prepay; Premium support (5 Year)	1
RS-BT-CVA-PE-PP	Rubrik Cloud Vault - Archive; per BETB; Premium support; prepay (5 Year)	100
RS-UR-MH20G-PE-PP	Rubrik for M365, Managed, including 20 FEGB per user; per user; Premium support; prepay (5 Year)	330
RS-UR-MH50G-PE-PP	Rubrik for M365, Managed, including 50 FEGB per user; per user; Premium support; prepay (5 Year)	20

2. The City reserves the right to inspect the equipment prior to purchase.

Exhibit B

PRICING PAGE

Item		Qty	Unit Price	Ext Price
1.1f.1	RS-BT-EE-PE-PP	60	\$1,504.80	\$90,288.00
1.1f.2	RHA-6408S-01	1	\$19,951.61	\$19,951.61
1.1f.3	RA-PS-INST-ONST	1	\$7,012.50	\$7,012.50
1.1f.4	RCA-SFP-TSR-01	2	\$387.11	\$774.22
1.1f.5	RS-HW-SVC-PE-S2	1	\$13,886.40	\$13,886.40
1.1f.6	RS-BT-CVA-PE-PP	100	\$173.25	\$17,325.00
1.1f.7	RS-UR-MH20G-PE-PP	330	\$66.00	\$21,780.00
1.1f.8	RS-UR-MH50G-PE-PP	20	\$132.00	\$2,640.00

ANTI-DISCRIMINATION AGAINST ISRAEL ACT CERTIFICATION

Pursuant to §34.600, RSMo, the City of Branson as a fourth class political subdivision of the State of Missouri shall not enter into a contract to acquire or dispose of services, supplies, information technology, or construction valued at \$100,000, or with a contractor having ten or more employees, unless the contract includes a written certification that the person or company is not currently engaged in, and shall not, for the duration of the contract, engage in a boycott of:

Goods or services from the State of Israel;

Companies doing business in, or with, Israel;

Companies authorized by, licensed by, or organized under, the laws of the State of Israel; or


Persons or entities doing business in the State of Israel.

For a definition of the term "boycott", please refer to §34.600.3, RSMo. A copy of the statute is attached.

By signing below, Anup Sreedharan on behalf of CDW Government LLC
(Printed Name) (Business Name)
agrees and certifies that it does not currently, and will not for the duration of this contract,
engage in any of the types of boycotts listed above.

Signed this the 17 day of August, 2023.

Business Name: CDW Government LLC

By: 
(Signature)

Name: Anup Sreedharan
(Printed Name)

Title: Sr. Manager, Program Sales