



State of Oklahoma

Office of Management and Enterprise Services

**ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH ECAPITOL LLC
RESULTING FROM STATE WIDE CONTRACT NUMBER 1049**

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to eCapitol LLC in connection with Solicitation 0900000313 ("Solicitation") and is effective September 30th, 2018.

Recitals

Whereas, the State issued a Solicitation for proposals to provide Oklahoma state agencies with the ability to find and track Oklahoma State legislative bills through an online subscription, as more particularly described in the Solicitation;

Whereas, eCapitol LLC ("eCapitol") submitted a proposal which contained other Contract Documents; and

Whereas, the State and eCapitol LLC ("eCapitol") have negotiated the final terms under which eCapitol will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. Addendum Purpose.

This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to eCapitol under this Solicitation as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. Negotiated Documents of the Contract.

2.1. The parties have negotiated certain terms of the Contract as follows:

- i. revisions to the subscriber agreement as contained in Attachment A to this Addendum titled, "Subscriber Agreement"; and

- ii. revisions to the subscription application as contained in Attachment B to this Addendum titled "Subscription Application."

- 2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.
- 2.3. eCapitol affirmatively acknowledges it takes no exception to the Solicitation and that it will not ask the State or any agency to execute additional documents not listed above in connection with this Contract.

**State of Oklahoma by and through the Office
Of Management and Enterprise Services**

By: _____

Name: James L. Reese, II

Title: Chief Information Officer

Date: _____

10/5/18

eCapitol LLC

By: _____

Name: Linda J. Maxey

Title: Chief Information Officer

Date: 09.30.18

**Attachment A to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH ECAPITOL LLC
RESULTING FROM STATE WIDE CONTRACT No. 1049**

The **Subscriber Agreement** is hereby amended as set forth below, in connection with Solicitation number 0900000313, between the State of Oklahoma and eCapitol, LLC.

This Subscriber Agreement is a Contract Document in connection with Oklahoma Statewide Contract No. 1049 between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") and eCapitol, LLC ("Contract"). Subscriber is any State Entity or Affiliate as defined in the Solicitation.

Agreement Text

eCapitol, LLC ("eCapitol") accumulates, formats, and generates politically neutral data resulting from various government actions. This website, including all of its features and content (the "Website"), is a service made available by eCapitol and all information, data, services, reports, documents and other materials accessed or provided on or through this Website or otherwise provided by eCapitol (the "Materials") may be used solely under the terms and conditions set forth in this eCapitol Subscriber Agreement (this "Agreement").

Subscriber represents that it desires to acquire from eCapitol the right of access to the Website and the Materials in order to conduct research and review, read and/or print Materials to its own printers, and/or have Materials delivered automatically via email, all for Subscriber's own personal use and not for commercial use or purpose. By clicking "I Agree" below, Subscriber accepts this Agreement and agrees to comply with and be bound by the terms and conditions contained herein.

1. **Grant.** eCapitol grants Subscriber a non-exclusive, non-transferable, revocable, limited license to access and use the Website and the Materials made available on the Website or otherwise provided by eCapitol in accordance with this Agreement and any specific terms and conditions that may be posted in connection with particular Materials, as defined below in 2(a). Subscriber may use the Materials only within its own organization and solely in the regular course of legislative and other governmental research and related work.
2. **Limitations on Use.**
 - a. The Materials, including all reports, documents, text, graphics, images, video, metadata, design, organization, compilation, look and feel, and all other protectable intellectual property, available through the Website or otherwise provided by eCapitol are the property of eCapitol and are protected by copyright and other intellectual property laws. Unless Subscriber obtains the written consent of eCapitol, Subscriber may not sell, publish, distribute, retransmit or otherwise provide access to the Materials or the Website to any third party, including, if applicable, associate members, professional colleagues, clients, affiliates or associations, with the following exceptions:
 - i. With eCapitol's prior written consent, which consent may be granted or withheld in eCapitol's sole and absolute discretion, Subscriber may distribute a copy of a report or document or a portion thereof in nonelectronic form or via email to approved individuals, provided Subscriber includes all copyright and other proprietary rights notices in the same form in which the notices appear in the Materials or on the Website, original source attribution, and the phrase "Used with permission from eCapitol, LLC". eCapitol reserves the right to charge Subscriber for any such distribution, if agreed upon in writing by both parties. Subscriber is not permitted to use this limited exception for the purpose of regularly providing other parties with access to the Materials.

- ii. Subscriber may occasionally download and temporarily store insubstantial portions of Materials to a storage device under Subscriber's exclusive control solely for the internal or personal use of Subscriber. Subscriber may not otherwise provide access to such archived Materials to any third party.
- b. Subscriber agrees not to modify, alter, or change the content or form of the Materials or create abstracts, summaries, or derivative works from the Materials, scrape or display the Materials for use on another website or service or for distribution to any third party. Subscriber further agrees not to post any Materials to weblogs, newsgroups, mail lists or electronic bulletin boards, without the prior written consent of eCapitol.
- c. Subscriber agrees not to use the Website or the Materials for any unlawful purpose. eCapitol reserves the right to terminate or restrict Subscriber's access to the Website or the Materials if, at eCapitol's sole and absolute determination, and after providing notice and Subscriber fails to cure within 10 days. Subscriber's use of the Website or the Materials violates any laws, regulations or rulings, infringe upon eCapitol's or another person's rights or violate the terms of this Agreement. Upon request by eCapitol, at a time agreed upon in advance, in writing, and during normal business hours, Subscriber shall provide to eCapitol reasonable access to (i) the premises where Subscriber's terminals for accessing the Website and Materials are located, and (ii) any publications, websites, weblogs, newsgroups, mail lists or electronic bulletin boards created or maintained by Subscriber, for the purposes of verifying that Subscriber is using the Website and the Materials in accordance with the provisions of this Agreement. Such access shall not be unduly burdensome or excessive.
- d. As provided by this Agreement, access to eCapitol and distribution of eCapitol reports and documents is restricted to Subscriber and its authorized user(s) only. Retention and/or possession of any data obtained from eCapitol data files through on-line access obligates Subscriber to full payment thereof. It is further understood and agreed that the obligations agreed to herein shall survive the termination of this Agreement.
- 3. **Intellectual Property Rights.** Except for the limited license granted to Subscriber in Section 1, nothing in this Agreement or in the terms and conditions relating to any particular Materials or other service should be construed as conferring upon Subscriber any copyright or other intellectual property license or right (whether by implication, estoppel or otherwise). Subscriber agrees that the Materials and the Website are protected by applicable copyrights, trademarks, service marks, patents or other proprietary rights and laws, all of which are and will continue to be the exclusive property of eCapitol.
- 4. **Charges and Modification of Charges.** Subscriber agrees to pay the annual subscription within forty-five (45) days of receipt of invoice. Subscriber shall be liable for any willful or intentional unauthorized access of the Website by, or distribution of the Materials to, any third party, and Subscriber agrees to pay to eCapitol the amount equal to the greater of (i) the annual subscription fee in effect at the time of the breach of this Agreement charged to subscribers similar to the third party for said unauthorized access, or (ii) any payments received by Subscriber from the third party for access to the Website or the Materials, neither of which to exceed \$13,450.
- 5. **Changes in Services.** eCapitol reserves the right to revise the Website, the services and Materials offered, its method of operations, and/or documentation provided.
- 6. **Term.** This Agreement shall be effective upon Subscriber's acceptance of this Agreement by clicking "I Agree" below and shall remain in effect for a term of one (1) year (the "Term") unless earlier terminated pursuant to the terms of this Agreement or the rights of termination set forth in the Solicitation. The annual subscription fee for the Term is earned by eCapitol upon Subscriber's acceptance or renewal of this Agreement, regardless of the terms of payment agreed upon by the parties. Subscriber will be refunded a prorated portion of subscription fee if terminated before end of term.
- 7. **Disclaimer of Warranties and Representations.** Subscriber acknowledges that the sources of information which eCapitol relies upon are not directly verifiable by eCapitol and that eCapitol only represents its commercially reasonable efforts to provide accurate information to its Subscribers. Beyond that, eCAPITOL SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR PERFORMANCE. eCAPITOL shall use commercially reasonable efforts to assure that access to the website will be available to Subscriber during ordinary business hours.

8. **Limitation of Liability and Subscriber's Exclusive Remedy.** SUBSCRIBER ACKNOWLEDGES AND AGREES THAT USE OF THE WEBSITE AND THE MATERIALS IS AT SUBSCRIBER'S SOLE RISK. Neither party's total liability during the term of per claim under this agreement will exceed \$13,450. Notwithstanding anything to the contrary in this Contract, the foregoing provisions of this Section shall not apply to or limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by eCapitol; eCapitol's indemnity obligations under this Contract; eCapitol's confidentiality obligations under this Contract; the bad faith, gross negligence or intentional misconduct of eCapitol or its employees, agents and subcontractors; or other acts for which applicable law does not allow exemption from liability.
9. **Force Majeure.** Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Subscriber may terminate a purchase order if eCapitol cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.
10. **User(s).** Unless otherwise provided, this Agreement includes one, single user eCapitol login license for Subscriber. Subscriber agrees to inform all of its applicable employees and agents that the information retrieved from the eCapitol on-line system is subject to restrictions and limitations in use and may not be misused as set forth in Section 2. Subscriber shall inform all such persons of such restrictions and limitations and further agrees to be responsible for the use of its account, the Website and the Materials, and Subscriber shall cause any misuse to cease upon discovery of the misuse. If Subscriber elects to contract for multiple user access, eCapitol shall provide Subscriber with a separate identification (ID) and password for each on-line subscription to Subscriber. Billing for on-line services will be determined by ID's utilized for accessing the on-line systems. Subscriber is responsible for the security of its ID's. Subscriber agrees to pay all charges incurred by any user utilizing ID's assigned to Subscriber. Subscriber shall not reveal, share, disclose, or otherwise allow others to use the ID or password. Subscriber shall not sell or charge others for the right to use the account, or otherwise transfer the account.
11. **Distribution of Materials:** Subscriber may not distribute any information obtained from eCapitol to any third party other than its own specific or individual agency employees without the express written consent of eCapitol. eCapitol shall indemnify and hold harmless the State of Oklahoma and Subscribers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES that a court finally awards or that are included in a settlement approved in writing by eCapitol arising out of, or resulting from any acts or omissions of eCapitol or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY ECAPITOL WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND ECAPITOL MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. ECAPITOL AND THE SUBSCRIBER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

12. **Remedies.** eCapitol reserves the right to seek all remedies available at law and in equity for violations of this Agreement or any other applicable terms and conditions governing use of particular Materials. Furthermore, eCapitol retains the right to temporarily or permanently block access to the Website or certain Materials if eCapitol, in its sole discretion, determines that the Website or Materials have been used for an improper purpose or otherwise in violation of the terms of this Agreement, including non-payment after the 45 days stated above, and subscriber has failed to cure in 10 days.
13. **General.** Neither this Agreement nor any part or portion hereof may be assigned, sublicensed or otherwise transferred by eCapitol or the State without mutual prior written consent. Such consent will not be unduly withheld. If rights are granted under the terms of this Agreement, they may be assigned or transferred, at no additional cost, to other entities within the State. Should any provision of this Agreement be held to be void, invalid, unenforceable or illegal by a court of competent jurisdiction, the validity and enforceability of the other provisions will not be affected. Failure of eCapitol to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision.
14. **Governing Law and Venue.** This Agreement shall be construed and governed by the laws of the State of Oklahoma applicable to contracts made entirely within Oklahoma and wholly performed in Oklahoma, without regard to conflict of law principles. The sole jurisdiction and venue for any dispute arising out of this Agreement shall be the District Court of Oklahoma County, State of Oklahoma, and Subscriber hereby consents and submits to the personal jurisdiction of such court for the purpose of litigating any such dispute.
15. **Notices.** All notices will be directed to eCapitol, LLC, at Customer Services, P.O. Box 3366, Oklahoma City, Oklahoma 73101-3366, and to Subscriber at the address on the Invoice.

Attachment B to
Addendum 1 to
STATE OF OKLAHOMA CONTRACT WITH ECAPITOL LLC
RESULTING FROM STATE WIDE CONTRACT No. 1049

The **Subscription Application** is hereby amended as set forth below and will be the effective agreement on all contracts between the State of Oklahoma and eCapital, LLC that are entered from this time forward while this Agreement is in effect. The parties agree to use this **Subscription Application** or a document substantially similar.



www.ecapitol.net

PO Box 3366,
Oklahoma City, OK 73101-3366
Phone: (405) 524-2833
Email: publisher@ecapitol.net

Subscription Application

If multiple Usernames and Passwords are needed, please copy and fill out a separate form for each username.

Organization: _____

Contact: _____ Title: _____

Phone: _____ Email: _____

Cell: _____ Carrier/Service Provider: _____

Address: _____

City: _____ State: _____ Zip: _____

Preferred Password: _____

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TYPE INITIALS: _____ Date: _____