

TWO PARTY DESIGN ENGINEERING SERVICES CONTRACT
STANDARD PROVISIONS

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I. DEFINITIONS

- A. AUTHORIZATION: written direction from the DEPARTMENT to the CONSULTANT to proceed; it references this CONTRACT, the specific SERVICES to be performed and the DEPARTMENT PROJECT ID to which costs will be charged.
- B. CONSTRUCTION CONTRACT: agreement between the DEPARTMENT and a CONTRACTOR setting forth the obligations of the parties to the CONSTRUCTION CONTRACT, including, but not limited to, performance of the WORK, furnishing of labor and materials and basis of payment.
- C. CONSULTANT: individual, partnership, joint venture, corporation or agency undertaking the performance of the SERVICES designated under the terms of the CONTRACT and acting directly or through a duly authorized representative.
- D. CONSULTANT REPRESENTATIVE: employee designated by the CONSULTANT to act as liaison between the CONSULTANT and the DEPARTMENT
- E. CONTRACT: agreement between the DEPARTMENT and a CONSULTANT setting forth the obligations of the parties to the CONTRACT, including, but not limited to, these standard provisions, performance of the SERVICES, furnishing of labor and materials and basis of payment. The CONTRACT type may be a MASTER CONTRACT, which will include SERVICES to be provided under a WORK ORDER.
- F. CONTRACT AMENDMENT: agreement between the DEPARTMENT and a CONSULTANT setting forth the change in SERVICES from the original contract. The change in compensation, fixed fee and completion date, if any, shall be agreed upon by the DEPARTMENT and the CONSULTANT.
- G. CONTRACTOR: individual, partnership, joint venture, corporation or agency undertaking the performance of the WORK designated under the terms of a CONSTRUCTION CONTRACT and acting directly or through a duly authorized representative.
- H. DEPARTMENT: Wisconsin Department of Transportation.
- I. DEPARTMENT REPRESENTATIVE: employee of the DEPARTMENT in immediate charge of this CONTRACT and designated to act as liaison between the DEPARTMENT and the CONSULTANT
- J. FHWA: Federal Highway Administration.
- K. MANUALS: DEPARTMENT'S Construction and Materials Manual (CMM); Finals Process for Let Project Closeout; Facilities Development Manual (FDM); LRFD Bridge Manual (BM); and Standard Specifications for Highway and Structure Construction (Standard Specifications,) and materials referenced in those manuals.
- L. MASTER CONTRACT: a type of CONTRACT under which WORK ORDERS are issued.
- M. MUNICIPALITY: city, village, town, or county.
- N. MUNICIPALITY REPRESENTATIVE: employee of the MUNICIPALITY in immediate charge of this CONTRACT and designated to act as liaison between the MUNICIPALITY and the CONSULTANT.
- O. PROJECT: specific section of highway proposed for improvement by the DEPARTMENT in this CONTRACT. Each PROJECT or other described activity has a unique project ID.
- P. PROJECT DOCUMENTS: all materials, guides, written instructions, plans, documents, correspondence, forms, computer files, databases, electronic mail messages, work product or other information of any type created by the CONSULTANT for the DEPARTMENT under this CONTRACT.
- Q. SERVICES: engineering or other services, labor, equipment, and materials furnished by the CONSULTANT in accordance with this CONTRACT.
- R. WORK: The furnishing of all labor, materials, equipment, and incidentals and the performing of all tasks needed to complete the project or a specific part of the project as specified in the CONSTRUCTION CONTRACT, together with the fulfillment of all associated obligations and duties required under the CONSTRUCTION CONTRACT.
- S. WORK ORDER: a type of CONTRACT issued under the terms of a MASTER CONTRACT.

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II. SCOPE OF SERVICES

A. General

1. Active Voice

- a. The DEPARTMENT defines the CONSULTANT and DEPARTMENT responsibilities within the contract documents in one of the following ways:
 - (1) Taken in context, the contract language makes the responsible party clear.
 - (2) Direct commands are written to the CONSULTANT in the active voice-imperative mood.
 - b. If the CONSULTANT thinks the responsibility for an action under the CONTRACT is unclear or given to the wrong party, the CONSULTANT will seek clarification from the DEPARTMENT.
 - c. Sentences directing the CONSULTANT to perform SERVICES are written in the active voice-imperative mood. These CONSULTANT directions are written as commands. For example, the basic requirement to perform the CONTRACT SERVICES would be expressed as, "Furnish all SERVICES to accomplish this CONTRACT," rather than "The CONSULTANT shall furnish all SERVICES to accomplish this CONTRACT". In the imperative mood, the subject "the CONSULTANT" is understood.
 - d. Requirements to be performed by others are written in the active voice. Sentences written in the active voice identify the party responsible for performing the action. For example, "The DEPARTMENT will provide manuals, guides, written instructions and other information and data necessary to enable the CONSULTANT to perform the SERVICES to the same standards required of the DEPARTMENT'S personnel." Certain requirements of the CONSULTANT may also be written in the active voice, rather than the active voice-imperative mood, if the sentence includes requirements for others in addition to the CONSULTANT. For example, a sentence that involves action by both the CONSULTANT and the DEPARTMENT would be expressed, "At the request of the DEPARTMENT, the CONSULTANT shall furnish maps, portions of plans, supplemental reports or other information relating to the SERVICES."
 - e. Sentences that define terms, describe a product or desired result, or describe a condition that may exist are written in neither the active voice nor the imperative mood. These types of sentences that describe a condition use verbs requiring no action. For example, "The DEPARTMENT REPRESENTATIVE is identified in the CONTRACT."
2. Perform all SERVICES consistent with applicable standards and requirements contained in the MANUALS. Revisions to the MANUALS made subsequent to the execution of this CONTRACT will be considered as orders defined in (IV)(B)(1.)
 3. Furnish all SERVICES, materials, equipment, supplies, and incidentals other than those designated in writing to be furnished by the DEPARTMENT and check or test them prior to use.
 4. The DEPARTMENT and FHWA may participate in all conferences and reviews.
 5. Confer with the DEPARTMENT and prepare and present such information and studies pertinent or requested by the DEPARTMENT to enable it to reasonably pass judgment on the features of the SERVICES. The CONSULTANT shall make such changes or revisions to the SERVICES required by the DEPARTMENT.
 6. The DEPARTMENT reserves the right to select the alternative to be used and may request additional alternatives be studied.
 7. At the request of the DEPARTMENT furnish maps, portions of plans, supplemental reports or other information relating to the SERVICES.
 8. This CONTRACT serves as a permit under sec. 86.07(2), Wis. Stats., for the CONSULTANT to perform the SERVICES on property under the jurisdiction of the DEPARTMENT, unless a

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separate permit is required by the DEPARTMENT REPRESENTATIVE. The CONSULTANT is an authorized representative of the DEPARTMENT for purposes of the right of entry under sec. 84.01(10), Wis. Stats., to enter private lands to perform the SERVICES.

9. The SERVICES under this CONTRACT are subject to review and approval by the DEPARTMENT at those appropriate steps defined in detail in the MANUALS.
- B. Control and Authority
1. DEPARTMENT
 - (1) The DEPARTMENT REPRESENTATIVE is identified in this CONTRACT and will monitor CONSULTANT compliance with the CONTRACT.
- C. SERVICES to be Performed by the CONSULTANT
1. Perform field operations in accordance with Occupational Safety and Health Administration (OSHA) regulations and accepted professional practice.
 2. Railroad and Utility Coordination
 - a. Arrange for applicable utility and railroad coordination as set forth in the MANUALS.
 - b. Provide necessary information to allow the DEPARTMENT to negotiate utility and railroad agreements.
 3. Surveys
 - a. Make surveys to accomplish the SERVICES in accordance with the MANUALS.
 - b. Surveys shall be tied into the coordinate system as specified in the Special Provisions.
 4. Soils and Subsurface Investigation
 - a. Prepare a Soils Report(s) in accordance with the MANUALS.
 - b. Recommend additional subsurface SERVICES, if warranted.
 5. Public Involvement
 - a. Prepare a Public Involvement Plan according to the MANUALS.
 - b. Maintain a log of public and agency involvement activities.
 - c. Assist the DEPARTMENT in answering all questions received from the general public.
 6. Schedule and attend meetings and conferences as required in the Special Provisions.
 7. Prepare the Plans, Specifications, and Estimates (P.S. & E.) as specified in the MANUALS.
 8. Unless terminated, the CONTRACT is in full force and effect for the purposes of requiring changes or revisions in accepted SERVICES.
- D. Agency Coordination
1. General
 - a. Consult with applicable affected local, state, and federal agencies and supply them with the necessary information according to the MANUALS.
 - b. Contact with the FHWA shall be only through the DEPARTMENT.
 2. Prepare necessary permit applications according to the MANUALS.
- III. PROSECUTION AND PROGRESS
- A. Start of Services
1. Commence SERVICES upon AUTHORIZATION from the DEPARTMENT.
 2. The DEPARTMENT will not be liable for payment for SERVICES performed without AUTHORIZATION.
- B. Progress
1. Prepare progress reports documenting the SERVICES performed to date.
- C. Completion of Services
1. Notify the DEPARTMENT when the SERVICES have been completed.
 2. The DEPARTMENT will notify the CONSULTANT of the formal acceptance of the completed SERVICES.

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D. Delays and Extensions

1. The DEPARTMENT may extend the time for completion, with a CONTRACT AMENDMENT, in the event of an excusable non-compensable delay as defined in the Standard Specifications.
2. Prior to completion of the CONTRACT, request, if desired, a CONTRACT AMENDMENT for an excusable delay.

E. Termination of Contract

1. Termination for Cause – Default

- a. The DEPARTMENT may terminate this CONTRACT, in whole or in part, upon default by CONSULTANT, including:
 - (1) Failing to begin the SERVICES under the CONTRACT within the time specified.
 - (2) Failing to perform the SERVICES with sufficient workers, equipment, or materials to complete the SERVICES within the specified time.
 - (3) Failing to complete the CONTRACT within the CONTRACT time specified, as extended by the DEPARTMENT.
 - (4) Performing the SERVICES unsuitably, or not obeying a DEPARTMENT directive to remove and replace or otherwise correct unacceptable SERVICES.
 - (5) Discontinuing the prosecution of the SERVICES before completion without the DEPARTMENT'S permission.
 - (6) Failing to resume SERVICES that the DEPARTMENT discontinued within a reasonable time after notice to do so.
 - (7) Insolvency or bankruptcy, or committing an act of bankruptcy or insolvency.
 - (8) Allowing a final judgment against the CONSULTANT to stand unsatisfied for a period of 48 hours.
 - (9) Making an assignment for the benefit of creditors.
 - (10) Failing to comply with the provisions of the CONTRACT.
 - (11) Failing to acquire or maintain the required insurance.
 - (12) Failing to perform the SERVICES in an acceptable manner.
 - b. The DEPARTMENT will notify the CONSULTANT in writing of a default condition specifying the default and the action required. If the CONSULTANT, within a period of 10 calendar days of the notice, fails to proceed satisfactorily in compliance therewith, the DEPARTMENT then has full power and authority to take the performance of SERVICES out of the hands of the CONSULTANT; to use all suitable materials and equipment on the project; or to enter into CONTRACT, or use other methods that the DEPARTMENT requires to perform the SERVICES.
 - c. If the DEPARTMENT takes over or reassigns the incomplete SERVICES (III)(E)(a), the DEPARTMENT will deduct all additional costs and damages and the costs and charges of completing the SERVICES under CONTRACT from payments due the CONSULTANT. If that total exceeds the sum that would have been payable under the CONTRACT, the DEPARTMENT will consider the CONSULTANT liable, and the CONSULTANT shall pay the excess sum to the DEPARTMENT.
 - d. The DEPARTMENT will not relieve the CONSULTANT of the liability for the assessment of liquidated damages because of the CONSULTANT'S default.
 - e. The rights and remedies of the DEPARTMENT are in addition to all other rights and remedies provided by law or under the CONTRACT.
2. Termination for Convenience
- a. The DEPARTMENT may terminate the CONTRACT in whole or in part after determining that termination is in the DEPARTMENT'S or the public interest.
 - b. The DEPARTMENT will deliver to the CONSULTANT a termination notice specifying the extent of termination and the effective date.

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- c. Upon receipt of a termination notice, do not proceed with the affected SERVICES unless directed to do so in that notice. Complete all SERVICES specified in the termination notice. The DEPARTMENT reserves the right to declare in default a CONSULTANT who does not carry out the conditions of a termination for convenience.
 - d. If the DEPARTMENT orders termination of the CONTRACT for convenience, the CONSULTANT shall be paid for the SERVICES rendered, an amount bearing the same ratio to the total CONTRACT amount as the amount of SERVICES completed or partially completed and delivered to the DEPARTMENT bears to the total amount of SERVICES provided for herein, as a CONTRACT AMENDMENT.
 - e. If the DEPARTMENT directs, the CONSULTANT shall promptly remove equipment and supplies from the project site or other DEPARTMENT property. If the CONSULTANT does not remove the equipment and supplies as directed, the DEPARTMENT may do so at the CONSULTANT'S expense.
 - f. The DEPARTMENT will not relieve the CONSULTANT of contractual responsibilities for the SERVICES performed and SERVICES completed.
- F. Subletting or Assignment of Contract
- 1. Obtain approval to sublet or assign any part of this CONTRACT.
 - 2. Perform SERVICES amounting to at least one-half of the original CONTRACT amount.
 - 3. Retain full responsibility for the fulfillment of the CONTRACT.

IV. BASIS OF PAYMENT

A. General

- 1. The CONSULTANT will be paid for the performed and approved SERVICES under this CONTRACT.
- 2. Reimbursement for costs will be limited to those which are allowable under 48 CFR Part 31 and by DEPARTMENT policy.
- 3. Submit invoices for the SERVICES performed to date. The final invoice shall be submitted within three months of completion of SERVICES.
- 4. Submit a separate invoice and a separate final invoice for each individual PROJECT.
- 5. Payment does not constitute acceptance of unsatisfactory or defective SERVICES.
- 6. The DEPARTMENT has the equitable right to set off against any sum due and payable to CONSULTANT under this CONTRACT, any amount the DEPARTMENT determines the CONSULTANT owes the DEPARTMENT, whether arising under this CONTRACT or under any other CONTRACT.
- 7. Maintain and make available all records pertaining to all costs incurred for inspection by the DEPARTMENT, the FHWA, and the Comptroller General of the United States for three years following the final payment.
- 8. Compensation will not exceed the total CONTRACT amount unless authorized by a CONTRACT AMENDMENT.
- 9. Compensation will not be allowed for improper CONSULTANT performance.
- 10. Pay subconsultants within 10 business days of receipt of a payment for SERVICES performed.

B. SERVICE Orders, Additional SERVICES, or Decreased SERVICES

- 1. The DEPARTMENT may give orders regarding the SERVICES including additional SERVICES or the elimination of required SERVICES until the CONTRACT is terminated.
 - a. If the order will not increase or decrease SERVICES, there is no change to the CONTRACT amount.
 - b. The CONSULTANT must notify the DEPARTMENT if extra compensation is desired for the SERVICES in (IV)(B)(1)(a).

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- c. If the order will increase or decrease SERVICES the DEPARTMENT and the CONSULTANT will negotiate adjustments to the CONTRACT amount and submit a CONTRACT AMENDMENT.
- C. Errors and Omissions
 - 1. Be responsible for the accuracy of the SERVICES, and promptly make necessary revisions to its SERVICES resulting from its negligent acts, errors, or omissions without additional compensation.
 - 2. Give immediate attention to these revisions to prevent or minimize delay to any PROJECT.
 - 3. Be responsible to the DEPARTMENT for any losses to or costs to repair or remedy as a result of negligent acts, errors or omissions.
 - 4. Unless terminated, the CONTRACT is in full force and effect for the purposes of requiring revisions in the SERVICES necessary to correct errors or omissions.
- V. MISCELLANEOUS PROVISIONS
 - A. Professional Practice
 - 1. Perform all SERVICES consistent with generally accepted professional practice.
 - B. Ownership of Documents
 - 1. The DEPARTMENT is owner of all PROJECT DOCUMENTS.
 - 2. Deliver all PROJECT DOCUMENTS within 10 business days of request or completion of CONTRACT.
 - 3. The DEPARTMENT'S reuse of PROJECT DOCUMENTS other than for the intended PROJECT shall be at the sole risk of the DEPARTMENT.
 - C. Legal Relations
 - 1. Comply with and observe applicable federal, state, and local laws, ordinances, and regulations in effect at the time the SERVICES are performed.
 - 2. Indemnify the DEPARTMENT and the FHWA and all of their officers, agents, and employees on account of any damages to persons or property resulting from negligence in performance of the SERVICES, errors, omissions and/or noncompliance with any applicable federal, state or local laws.
 - 3. Be responsible for all damages to property or persons arising out of negligent act, error and/or omission.
 - D. Prevailing Wage Rate
 - 1. Sec. 103.50, Wis. Stats., the Wisconsin prevailing wage rate law, does not apply.
 - E. Nondiscrimination in Employment
 - 1. The CONSULTANT will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this CONTRACT.
 - 2. The CONSULTANT, with regard to the SERVICES performed by it during the CONTRACT, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
 - 3. In all solicitations, either by competitive bidding, or negotiation made by the CONSULTANT for SERVICES to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the CONSULTANT of the CONSULTANT'S obligations under this CONTRACT and

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- the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. The CONSULTANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish the information, the CONSULTANT will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. In the event of the CONSULTANT'S noncompliance with the Non-discrimination provisions of this CONTRACT, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies; and/or
 - b. Cancelling, terminating, or suspending the CONTRACT, in whole or in part.
 6. The CONSULTANT will include the provisions of (V)(E) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The CONSULTANT will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the CONSULTANT becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the CONSULTANT may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the CONSULTANT may request the United States to enter into the litigation to protect the interests of the United States.
- F. Federal Requirements for Disadvantaged Business Program
1. Disadvantaged Businesses Enterprises (DBE) as defined in 49 CFR Part 26 and federal law shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the DBE requirements 49 CFR Part 26 and federal law apply to this CONTRACT (and any WORK ORDER) only when they are federally funded.
 2. When any portion of this CONTRACT is federally funded and Federal law in effect at the time this CONTRACT is executed authorizes and requires it, the CONSULTANT agrees to ensure that DBE'S have the maximum opportunity to participate in the performance of any subcontracts financed in whole or in part with federal funds provided under this agreement. Take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform subcontracts. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts. Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this CONTRACT (or any WORK ORDER) by the DEPARTMENT or other such remedy as the DEPARTMENT deems appropriate.
 3. When this CONTRACT is federally funded, identify, by name, the DBE'S whose utilization is intended to satisfy this provision, the items of SERVICES involved, and the dollar amounts of such items of SERVICES.
 4. When this CONTRACT is federally funded, maintain records and document its performance under this item.

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- G. Equal Employment Opportunity (All Contracts Exceeding \$10,000)
1. During the performance of this CONTRACT, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
 - b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
 - d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
 - e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
 - f. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
 - i. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to-ensure that LAP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*)
 2. Include the provisions of (V)(G) in every subcontract in excess of \$10,000.
- H. Implementation of Clean Air Act and Clean Water Act (All Contracts Exceeding \$10,000)

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1. Stipulate that any facility to be utilized in the performance of this CONTRACT, unless such CONTRACT is exempt under the Clean Air Act and under the Clean Water Act is not listed, on the date of CONTRACT award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities Pursuant to 40 CFR 15.20.
 2. Comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed therein.
 3. Notify the DEPARTMENT (or MUNICIPALITY, in the case of a three-party contract) and the U.S. EPA Assistance Administrator for Enforcement of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for this CONTRACT is under consideration to be listed on the EPA List of Violating Facilities.
 4. Include the provisions (V)(H) in every nonexempt subcontract.
- I. Conflict of Interest
1. Warrant that neither it nor any of its affiliates have any financial or personal interest that would conflict in any manner with the performance of the SERVICES, and that neither it nor any of its affiliates will acquire directly or indirectly any such interest.
 2. Warrant that it will not employ for any SERVICES any person who is employed by the DEPARTMENT at the time of execution or during the life of this contract without prior written approval from the DEPARTMENT.
 3. Warrant that it will immediately notify the DEPARTMENT if any actual or potential conflict of interest arises or becomes known. Upon receipt of such notification a DEPARTMENT review and approval is required to continue to perform SERVICES under this CONTRACT.
- J. Certification Regarding Lobbying
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTANT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CONSULTANT shall complete and submit standard form-LOLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The CONSULTANT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- K. Contingent Fees
1. Warrant that only employee(s) working solely for the CONSULTANT solicited or secured this CONTRACT (or any WORK ORDERS), and that any fees, commissions, percentages, brokerage fees, gifts, or any other considerations, contingent upon or resulting from the award or

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making of this CONTRACT (or any WORK ORDER) will be given only to employee(s) working solely for the CONSULTANT.

2. For breach or violation of this warranty, the DEPARTMENT may terminate this CONTRACT without liability, or deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters-All Covered Transactions
1. For purposes of this section, "proposal" means this entire CONTRACT when signed and submitted by CONSULTANT to the DEPARTMENT before execution by the DEPARTMENT.
 - a. Instructions for Certification
 - (1) Signing and submitting this proposal provides the certification set out in section (V)(L)(1)(b) below.
 - (2) The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 and Chapter Trans 504 Wis. Admin. Code.
 - (3) Include (V)(L) titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—All Covered Transactions" without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - (4) Submit an explanation for the inability to provide the certification set out in (V)(L)(1)(b) below. The DEPARTMENT will determine if the explanation is sufficient to enter into this transaction. Failure to furnish a certification or explanation will exclude participation in this transaction.
 - (5) The certification in this clause is a material representation of fact upon which reliance was placed when the DEPARTMENT determined to enter into this transaction. If it is later determined that the CONSULTANT knowingly rendered an erroneous certification the DEPARTMENT may pursue all available remedies.
 - (6) Provide immediate written notice to the DEPARTMENT if at any time the CONSULTANT learns that its certification was invalid when submitted or has become invalid by reason of changed circumstances.
 - (7) Will not enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction without written notice by the DEPARTMENT. The DEPARTMENT may pursue all available remedies for failure to obtain this written notice.
 - b. The CONSULTANT certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the DEPARTMENT, under Chapter Trans 504 Wis. Admin. Code or any federal department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

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- (3) Are not currently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in section (V)(L)(1)(b)(2) above; and
 - (4) Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.
- M. Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions
1. Certify that all grantees or subcontractors, also known as lower tier participants as that term is used in 49CFR Part 29 have certified in writing that neither they nor their principals are currently debarred, suspended or proposed for debarment, have been declared ineligible or have voluntarily been excluded from participation in this or any other Federal, State or local transaction by any Federal, State or local department agency or official.
- N. Insurance Requirements
1. Maintain the following types and limits of commercial insurance in force until such time as all SERVICES under or incidentals to the CONTRACT have been completed.
(See Insurance Table, VI Attachment A)
 2. Furnish an Insurance Certificate, (or Certificates) showing the CONSULTANT is covered by the required types and amounts of insurance to the DEPARTMENT prior to the performance of any SERVICES under this CONTRACT.
 3. A 60 day notice of cancellation or change in coverage will be required. All coverage shall be placed with insurance companies licensed to do business in the State of Wisconsin with an A.M. Best rating of A - or better. The DEPARTMENT reserves the right to require other coverage and limits as described in the Special Provisions of this CONTRACT.
 4. The insurance requirements shall apply with equal force whether the SERVICES under this CONTRACT is performed by the CONSULTANT, a subcontractor of the CONSULTANT, or by any entity employed directly or indirectly by either party.
 5. Exceptions to the insurance requirements require approval from the DEPARTMENT. The approval must be reflected in the Special Provisions of the CONTRACT.
- O. Choice of Law and Sovereign Immunity
1. The CONTRACT shall be governed, construed, and enforced in accordance with the laws of the State of Wisconsin.
 2. Nothing in this CONTRACT shall be deemed as a waiver of the State's sovereign immunity consistent with Wisconsin law.
 3. Non-Appropriation of Funds. With respect to any payment required to be made by DEPARTMENT under this CONTRACT, the parties acknowledge DEPARTMENT'S authority to make such payment is contingent upon appropriation of funds and required legislative approval sufficient for such purpose by the Legislature. If such funds are not so appropriated, either CONSULTANT or DEPARTMENT may terminate this CONTRACT after providing not less than thirty (30) days notice to the other party.
- P. Choice of Forum
1. Any dispute arising out of or related to this CONTRACT shall be brought solely and exclusively in front of the State and Federal courts of Dane County, Wisconsin.
- Q. Entire Agreement
1. This CONTRACT and its attachments contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.
- R. Severability
1. The invalidity or unenforceability of any provisions of this CONTRACT shall not affect the validity or enforceability of any other provision of this CONTRACT, which shall remain in full force and effect.

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VI. Attachment A. Insurance Table

Type of Insurance	Minimum Limits required *
(a) Commercial General Liability Insurance; shall be endorsed to include completed operations and blanket contractual liability coverage.	\$1 Million Combined Single Limits per Occurrence, may be subject to an Annual Aggregate Limit of not less than \$2 Million.
(b) Worker's Compensation and Employer's Liability Insurance	Worker's Compensation: Statutory Limits Employer's Liability: Bodily Injury by Accident - \$100,000 Each Accident Bodily Injury by Disease \$500,000 Each Accident \$100,000 Each Employee
(c) Commercial Automobile Liability Insurance; shall cover all CONSULTANT owned, non-owned and hired vehicles used in carrying out the contract.	\$1 Million - Combined Single Limits per occurrence
(d) Architect [sic] and Engineer [sic] Professional Liability Insurance **	\$1 Million - Each Claim, may be subject to an Annual Aggregate Limit of \$1 Million

* These requirements may be satisfied either through primary insurance coverage or through excess/umbrella insurance policies.

**This insurance requirement applies only to engineering services and is waived for non-engineering services. Engineering services are defined as project management, construction management and inspection, feasibility studies, preliminary engineering, design engineering, surveying mapping and architectural related services.

Attachment B. Special Provisions

Insert Special Provisions