

REQUEST FOR PROPOSALS

**PHASE 1 RENOVATION OF  
MARATHON COUNTY PUBLIC  
LIBRARY HEADQUARTERS  
WAUSAU, WISCONSIN**

PROPOSALS MUST BE RECEIVED  
NO LATER THAN **April 25, 2016**

FOR FURTHER INFORMATION PLEASE CONTACT:

Daniel Hoenecke, Facility Planner  
Marathon County Department of  
Facilities and Capital Management  
1308 West Street  
Wausau, WI 54401

## **INTRODUCTION**

This request for proposals is for architect/engineering design services, detailed cost estimates, state approved plans, bidding assistance, and construction observation for the First Phase of renovation of the Marathon County Public Library Headquarters, located at 300 North First St., Wausau, Wisconsin. This phase will include the build-out of the meeting room on the second floor, and the renovation of the library's bookmobile garage for the new Friends of the Library book sale room. It is anticipated that the project will involve general construction including but not limited to structural, plumbing, electrical and mechanical systems. A preliminary study and budget were developed in 2015 by architects Engberg Anderson. This study is available for review. Estimated costs for construction were approximately \$450,500.

## **PROPOSALS**

The proposal should describe your approach to the Scope of Services. The proposal should provide sufficient detail to enable the selection committee to thoroughly evaluate and compare it with other proposals. It should include the following information and any other information your firm believes is pertinent to this project.

1. Provide a description of your firm's work approach to the tasks and objectives identified in the Scope of Services. Any concepts, techniques and tools which your firm intends to utilize in the project should be included.
2. Identify any data which will be necessary in the project.
3. Describe your firm's intended relationship with County staff, including the level of assistance anticipated for completion of the proposed necessary tasks.
4. Provide a description of all additional subcontracts and associations with other firms your firm proposes to utilize in the performance of this work, including but not limited to plumbing, HVAC, electrical, and structural considerations. Explain fully the intended working relationships and responsibilities of each firm, and number of projects worked on together.
5. Provide a cost estimate of professional fees to undertake each task outlined in the Scope of Services. The cost estimate should include direct labor costs, any mark-up for fringe benefits, overhead, profit, and other direct expenses such as transportation, housing, printing, and per diem.
6. Provide a list of references for projects which your firm has completed in other communities which are similar in scope. The dates during which the projects occurred should be included, as well as the type of project, budgets, square footage, and value of change orders.
7. Provide 1-3 samples of comparable facilities and other projects undertaken by the A/E Project Manager your firm is proposing for this project. The Project Manager is defined as the person designated as having day-to-day responsibility to perform the work or to very

closely supervise the work of others in the development of this project. One copy of each will be sufficient. These will be returned to you at your request.

8. Provide resumés of all professionals who will be actively working on this project. Resumés should list related project experiences and general project duties.
9. The architect/engineer shall identify in the proposal a project schedule.

### **PROPOSAL SPECIFICS**

1. Any restrictions on the use of data contained within the proposal must be clearly stated in the proposal itself. Non-disclosure cannot be guaranteed after the selection stage of this procurement due to public records law considerations.
2. The County reserves the right to reject in whole or in part any and all proposals, to waive any informalities, and to accept the proposal determined to be in the best interest of the County. This solicitation may also be canceled in whole or in part if determined to be in the best interest of the County.
3. Submit FIVE (5) copies of the proposal within a single sealed envelope or container. The lower left corner of the envelope should have the following notation: **"PROPOSAL FOR PHASE 1 RENOVATION FOR MARATHON COUNTY PUBLIC LIBRARY HEADQUARTERS"**.
4. Proposals shall be received by **2:00pm, April 25, 2016:**

Daniel Hoenecke, Facility Planner  
Marathon County Department of  
Facilities and Capital Management  
1308 West Street  
Wausau, WI 54401  
(715) 261-6990 Fax  
[Daniel.Hoenecke@co.marathon.wi.us](mailto:Daniel.Hoenecke@co.marathon.wi.us)

5. Written questions only may also be directed to Daniel Hoenecke at the address listed above. Written answers to all questions will be provided to all interested firms. The members of the selection committee shall not be contacted by any firm.
6. The Architect/Engineer shall provide all drawings in an electronic file format acceptable to the County as well as conventional blueprints.

### **SELECTION PROCESS CALENDAR**

The anticipated calendar for the selection process is as follows.

### **PRE-PROPOSAL MEETING**

A pre-proposal meeting will be held on *Friday, April 1, 2016 at 2:00 p.m.* at the library to discuss any questions about the RFP. *This meeting is **mandatory** for all firms intending to submit a proposal.*

### **PROPOSAL DUE DATE**

Responses to the RFP will be due in the Facilities and Capital Management office at 1308 West Street, Wausau, WI 54401, by **2:00 p.m., Monday, April 25, 2016**. Proposals received after that day and time will NOT be accepted. Actual receipt by said time is required and deposit in the mail is insufficient.

### **PROPOSAL REVIEW**

All proposals received will be reviewed. Depending upon the response to the RFP, the County may elect to short list three to five firms that demonstrate substantial qualifications and experience. These firms will then be scheduled for interviews.

### **INTERVIEW**

Firms submitting proposals for this project may be scheduled for interviews the week of May 2, 2016. The interview will enable your firm to present its proposal and approach to the project. Interviews will be conducted by the Consultant Selection Team or its designees.

1. The A/E's Project Manager is expected to take an active part in making the presentation at the firm's interview. The firm should include other key people in the interview process.
2. The interview will last approximately one hour. The presentation should be limited to 15-20 minutes. The remainder of the time will be used for follow-up discussion and questions.
3. The Purchasing Agent for the Library will be Ralph Illick, Library Director.
4. The Architect/Engineer Selection Team will consist of members of the Marathon County Public Library Board's Building Committee, the Facilities and Capital Management Team, and/or other interested parties.
5. The County reserves the right to waive the interviews and make a selection based entirely on the proposals received.

Sec. 3.05(2) (d), Procurement Code, provides that: "No proposal shall be handled so as to permit disclosure of the contents of any proposal to any competing offerors during the process of negotiation. " Upon completion of contract negotiations, the contents of proposals, ranking tabulations of proposals, and the register of proposals kept by the county's purchasing agent shall be made available for inspection upon request. In accordance with sec. 3.05(2) (f), Procurement Code, Marathon County reserves the right to commence negotiations with one or more offerors whose proposals it deems to be most advantageous the county. Only the identity of those offerors shall be subject to disclosure to competing offerors prior to completion of negotiation. However,

Marathon County reserves the right to negotiate with any offeror at any time within the time specified for the validity of offers or proposals.

### ***CONSULTANT SELECTION***

The Purchasing Agent will consider the following criteria in evaluation of the proposals and interview presentation:

1. Past record of performance of the firm and project team on projects similar to this project, including the status of implementation of these projects. (15%)
2. Quality and content of the written proposal. (10%)
3. Specialized experience and technical competence of the firm and project team assigned including any subcontractors and associate firms as they relate to the specific needs of this project. (15%)
4. Familiarity of the firm with the type of problems and potential alternatives applicable to this project. (15%)
5. General understanding of and agreement with the firm's approach to the project including our confidence in the firm's ability to satisfactorily perform the work. (20%)
6. Ability to complete the project within the necessary timeframe. (15%)
7. Cost. (10%)

### ***AWARD OF PROJECT***

Receipt of proposals and subsequent award of the contract will be governed by Section 3.05(2) of the Procurement Code. Marathon County will enter into discussions with the highest ranked responsible offeror in accordance with Section 3.05(2) (f) of the Procurement Code. The final scope of the project may vary from the proposal depending on needs and resources. If Marathon County is unable to successfully conclude negotiations with the highest ranked responsible proposing firm, negotiations will be held with the next highest ranking responsible proposing firm. The contract shall then be awarded pursuant to Section 3.05(2) (g) of the Procurement Code to the responsible proposing firm whose proposal is determined to be the most advantageous to Marathon County taking into consideration past performance, price and the evaluation factors set forth herein. All proposals shall be a matter of public record upon award of the contract.

### ***EXISTING BUILDING DESCRIPTION***

**Owner:** The Owner for this project is The Board of Trustees for the Marathon County Public Library. The Purchasing Agent for this project will be the Director of the Marathon County Public Library.

**Existing Building:** The Library Facility at 300 North First Street in downtown Wausau is a three story building, plus a basement and garage formerly housing a bookmobile totaling 82,700 square feet. Originally opened in 1907, a building renovation was completed in 1996. The changes in

technology used for storing and retrieving information during the following years have necessitated small scale improvisations to various area used by staff, the public, and the resources we provide to our users.

### **SCOPE OF SERVICES**

It is envisioned that architectural/engineering services will include:

#### **A. Preliminary Design Review**

1. Prepare cost estimates based on the approved schemes.
2. Prepare construction scheduling in coordination with the Marathon County Facilities and Capital Management Team.

#### **B. Final Design**

1. After review by the Marathon County Facilities and Capital Management Team, revise drawings accordingly. Prepare bid documents, including final construction drawings specifications, and detailed cost estimate in bid format.
2. Submit final bid documents to the Marathon County Facilities and Capital Management Team for final review. Revise final bid documents as required.
3. Coordinate with the County for plan review by the appropriate building inspection departments.
4. Meet with County representatives for document acceptance and construction phase planning.

#### **C. Bidding Assistance**

1. Distribute bid documents and maintain plan holders list.
2. Answer questions and provide appropriate clarification of plans and specifications pertaining to technical aspects of project during the bidding period.
3. Preside over mandatory pre-bid conference.
4. Tabulate bids and recommend award of contract.
5. Advise the County on Contractor selection after bid opening.

#### **D. Construction**

1. Attend pre-construction conference(s).

2. Architectural/engineering services shall include observation activities, construction meetings, report writing, and any other necessary activities related to the observation of the Contractor's work and administration of the construction contract.
3. Construction project administration and observation activities shall include:
  - a. Maintenance of a construction project file including inspection records, correspondence, billings, and other construction related documents.
  - b. Review for approval all product submittals and shop drawings.
  - c. Review and make recommendations to the County on matters relating to the interpretation of the construction documents.
  - d. Review Contractor's requests for payment and make recommendations to the County.
  - e. Review and make recommendation to the County on all claims of the Contractor for extra work not covered by the construction documents. Prepare change orders and time extensions if required for County action.
  - f. Provide reports to the County regarding whether the work performed substantially conforms with plans and specifications.
  - g. Coordinate and conduct a final inspection and an instruction session with the Contractor and the County before final acceptance of the Contractor's work. Participate in the final inspection for the project and furnish the County with final quantities and a construction report itemizing any overruns and/or underruns and the reasons. Conduct closeout activities including required completion documentation.

#### **E. Post Construction**

1. Coordinate with the County the preparation by the Contractor(s) of the following:
  - a. Close out documentation
  - b. Manufacturers' equipment operation and maintenance manuals
  - c. As-built set of construction prints
2. Upon completion of the project, prepare and turn over to the County the construction drawing originals and CAD drawing files revised to reflect as-built conditions and the construction project file.

## MARATHON COUNTY PROCUREMENT POLICY

- 1.0 SPECIFICATIONS:** The specifications in any request for bids or proposal which forms the subject of this contract are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed/provided, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Marathon County shall be the sole judge of equivalency. Consultants are cautioned to avoid bidding/proposing alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the Consultant's letter-head, signed, and attached to the response to request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the Consultant shall be held liable.
- 3.0 ACCEPTANCE-REJECTION OF BIDS OR PROPOSALS:** Marathon County reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of Marathon County. Bids/proposals MUST be date and time stamped by the office of the soliciting purchasing agent on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing agent's office
- 4.0 METHOD OF AWARD:** Award of bids shall be made to the lowest responsible, responsive bidder unless otherwise specified. Award of proposals shall be subject to criteria set for in the request for proposal.
- 5.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without specific prior written approval by the Marathon County.
- 6.0 WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the Consultant.

**7.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified. Failure of the Consultant to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Consultant liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

**8.0 ORDERING:** Purchase orders shall be placed directly to the Consultant by authorized departments or purchasing agents who have issued the request for bids or proposal. No other purchase orders are authorized.

**9.0 PAYMENT TERMS AND INVOICING:** Marathon County normally will pay properly submitted Consultant invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.

9.1 Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

9.2 A good faith dispute creates an exception to prompt payment.

**10.0 TAXES:** Marathon County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. Marathon County, including all its departments, is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of Wisconsin sales or use tax on its purchases. Marathon County may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.

**11.0 CONTRACT INTEGRATION:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of a request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply. The documents constituting the contract between the Marathon County and the Consultant are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence in the following order: Change Orders (with the most recent taking precedence); Contract Document Amendments; the Contract Document as described in this signed Agreement; Request for Proposal Addenda; Request for Proposal; and Firm's Proposal. Any terms of any other documents concerning this agreement are superseded by the terms set forth herein.

**12.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. The Consultant shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. Marathon County reserves the right to cancel this contract if the Consultant fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.

**13.0 SAFETY REQUIREMENTS:** All materials, equipment, and supplies provided to Marathon County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

**13.1** The Consultant shall execute and maintain its work so as to avoid injury or damages to any persons or property. The Consultant shall comply with the requirements and specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its work, the Consultant shall, at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed and be in compliance with all applicable federal, state and local statutory and regulatory requirements including Wisconsin Labor Code and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, including the obligation to conduct safety inspections to verify said compliance by its employees, agents, and/or subcontractors.

**13.2** The Consultant is specifically notified that it is subject to federal requirements listed under Title 29, Chapter 15 of the United States Code (Occupational Health and Safety Act) by virtue of its contract with Marathon County, a public entity. The Consultant shall provide a similar notice to all its subcontractors.

**13.3 SAFETY DATA SHEET:** If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

**14.0 INSURANCE REQUIREMENTS:** The Consultant shall not commence work under this contract until all insurance required under this paragraph is obtained, and such insurance has been approved Marathon County, nor shall the Consultant allow any subcontractor to commence work on their subcontract until all similar insurance requirements have been obtained and approved.

**14.1** Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work. In case any work is sublet, the Consultant shall require the subcontractor similarly to provide statutory Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by the Consultant.

**14.2 General Liability, Professional Liability and Property Damage Insurance.**

The Consultant shall secure and maintain in force throughout the duration of this contract such General Liability, Professional Liability (if necessary) and Property Damage Insurance as shall protect itself and any subcontractor performing work covered by this contract from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by the Consultant, or by any subcontractor or by anyone directly or indirectly employed by either of them; and the amount of such insurance shall be as follows:

- Comprehensive General Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and Property Damage.
- Professional Liability Coverage, \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- Automobile Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and property damage.
- Excess Liability Coverage, \$1,000,000 over the General Liability and Automobile Liability Coverage.
- If aircraft are used in conjunction with this project, \$2,000,000 per occurrence and in aggregate for bodily injury and property damage.

**14.3** Marathon County reserves the right to require higher or lower limits where warranted.

**14.4** Marathon County reserves the right to require additional security, including, but not limited to, bid bonds or performance bonds as specifically set forth in its request for bids or proposals.

**14.5 PROOF OF INSURANCE:** The Consultant shall furnish the County with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that the Consultant meets the insurance requirements identified above. The Certificates of Insurance shall

include a provision prohibiting cancellation of said policies except upon 30 days prior written notice to the County and specify the name of the contract or project covered. The Certificate of Insurance shall be delivered to the Authorized Purchasing Agent, with a copy of the Certificate of Insurance to be delivered to the Marathon County Risk Manager for approval prior to the execution of this contract. Upon renewal of the required insurance, and annually thereafter, the County shall receive a new Certificate of Insurance for three years after completion of the project. The Certificates shall name Marathon County as an additional insured and describe the contract by name and or identification number in the "Description of Operations" section of the form.

**15.0 CANCELLATION / TERMINATION:** Marathon County reserves the right to:

15.1 NONAPPROPRIATION OF FUNDS. Cancel any contract in whole or in part without penalty due to non-appropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

15.2 Terminate this contract, for the County's convenience, at any time by a notice in writing from the County to the Consultant by certified mail. If the Contract is terminated by the County as provided herein, the Consultant shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Consultant covered by this Contract, unless payments of compensation have previously been made.

**16.0 CONTRACT MODIFICATIONS:** The scope of the services to be performed under this Contract may be amended or supplemented by mutual written agreement between the parties to the Contract. This amendatory provision shall not operate to prevent Marathon County from exercising its reserved right to establish reasonable time schedules for any of the work or services to be performed by or deliveries to be received from the Consultant hereunder. Furthermore, this amendatory provision shall not operate to prevent the County from canceling any of the services not yet performed or any deliveries no yet made at the time notice is given to the Consultant of the cancellation of such services or portion of the work to be performed hereunder.

**17.0 ASSIGNMENT:** No right or duty in whole or in part of the Consultant under this contract may be assigned or delegated without the prior written consent of Marathon County.

**18.0 PATENT INFRINGEMENT:** The Consultant selling articles to Marathon County as described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor

covenants that it will at its own expense defend every suit which shall be brought against Marathon County (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

**19.0 PUBLIC RECORDS ACCESS:** Marathon County is a political subdivision of the State of Wisconsin and as such is subject to the Wisconsin Public Records Law. It is the policy of Marathon County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities. Bid openings are public unless otherwise specified. Evaluations of responses to requests for proposals are subject to further discussion, clarification and negotiation. Records of bids and responses to requests for proposal will not be available for public inspection prior to issuance of the award of the contract.

**20.0 PROPRIETARY INFORMATION:** Any restrictions on the use of data contained within a response to request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with the Wisconsin Public Records Law. Proprietary restrictions normally are not accepted. However, when accepted, it is the Consultant's responsibility to defend the determination in the event of an appeal or litigation.

**20.1** Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of Marathon County.

**20.2** Any material submitted by the Consultant in response to Marathon County's request that the vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin Public Records Law, must be identified and include citation to the specific provisions of law that preclude disclosure and any factual or background information necessary to establish that the identified provisions of the law apply to that particular information. Bid/proposal prices cannot, under any circumstances, be held confidential.

**20.3** In the event Marathon County becomes involved in litigation due to the Consultant's refusal of permission to release information identified as confidential or proprietary, the Consultant agrees to indemnify, defend and hold harmless Marathon County for any costs associated with said litigation.

**21.0 CONFIDENTIALITY OF MARATHON COUNTY'S DATA:** In the event work conducted under this contract requires the Consultant to have access to Marathon County's database via Internet, direct contact or other connection to allow the provision of installation, support and maintenance services, the Consultant agrees to keep all such data confidential and to execute any reasonable agreement to assure Marathon County that the Consultant will comply with all state and federal confidentiality laws and/or regulations. These restrictions herein shall survive the termination of this contract, regardless of the reason for termination, and shall continue in full force and effect and shall be binding upon the Consultant or its agents, employees, successors, assigns or subcontractors. The Consultant shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by the Consultant, its agents, employees, successors, assigns and subcontractors regarding the confidentiality restrictions herein.

**22.0 PROMOTIONAL ADVERTISING / NEWS RELEASES:** Reference to or use of Marathon County, any of its departments, agencies or other subunits, or any county official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of Marathon County. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of Marathon County's purchasing agent.

**23.0 MUTUAL HOLD HARMLESS/INDEMNIFICATION**

The Consultant hereby agrees to release, indemnify, defend, and hold harmless Marathon County, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of the Consultant's officers, officials, employees, agents or assigns. Marathon County hereby agrees to release, indemnify, defend, and hold harmless the Consultant, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of Marathon County's officers, officials, employees, agents or assigns. Marathon County does not waive, and specifically reserves, its rights to assert any and all

affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.

**24.0 FORCE MAJEURE:** Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

#### **25.0 GRATUITIES AND KICKBACKS**

It shall be unethical for any person to offer, give, or agree to give any elected official, employee or former employee, or for any elected official, employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer for employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the contents of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceedings or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract, or order.

**26.0 DISPUTE RESOLUTION:** This Contract and the performance of the parties' obligations hereunder will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin, including conflict of law's provisions. The Consultant consents to personal jurisdiction in the State of Wisconsin. The venue of any action hereunder shall be in Marathon County, Wisconsin. If a dispute related to this agreement arises, all parties shall attempt to resolve the dispute through direct discussions and negotiations. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to either mediation or arbitration. If the matter is arbitrated, the procedures of Chapter 788 of the Wisconsin Statutes or any successor statute shall be followed. If the parties cannot agree to either mediation or arbitration, any party may commence an action in court as set forth above. If a lawsuit is commenced, the parties agree that the dispute shall be submitted to alternate dispute resolution pursuant to §802.12, Wis. Stats., or any successor statute. Unless otherwise provided in this contract, the parties shall continue to perform according to

the terms and conditions of the contract during the pendency of any litigation or other dispute resolution proceeding.

**27.0 INDEPENDENT CONTRACTOR STATUS:** The parties hereto agree that Consultant, its officers, agents and employees, in the performance of this Contract, shall act in the capacity of an independent consultant and not as an officer, employee or agent of Marathon County. The Consultant shall not be entitled to any of the rights, benefits, salaries, wages or fringe benefits which employees of Marathon County are eligible to receive. No federal, state, or local taxes or social security deductions or contributions shall be made by Marathon County on behalf of the Consultant. Neither Marathon County nor the Consultant will represent itself as the agent or legal representative of the other or as partner or joint venturer for any purpose whatsoever, and neither shall have any right to create or assume any obligation of any kind, express or implied, for or on behalf of the other in any way whatsoever. Furthermore, Consultant agrees to take such steps as are necessary to ensure that each of its subcontractors, if any, will not be considered to be an agent, servant, joint venturer with, or partner of, Marathon County.

**28.0 NON-DEBARMENT CLAUSE:** The Consultant hereby certifies that neither it nor any of its principal officers or officials has ever been suspended or debarred, for any reason whatsoever, from doing business or entering into contractual relationships with any governmental entity. The Consultant further agrees and certifies that this clause shall be included in any subcontract of this contract. . Marathon County also reserves the right to **cancel this contract with any federally debarred contractor or a contractor that is** presently identified on the list of parties excluded from federal or State of Wisconsin procurement and non-procurement contracts.

**29.0 STATEMENT OF COMPLIANCE:** The Consultant has carefully reviewed Marathon County's required contract language, as set forth in the Request for Proposal/Bid pertaining to termination of contract, change orders, gratuities and kickbacks, non-appropriation of funds, hold harmless/indemnification, insurance requirements/proof of insurance, dispute resolutions, and non-debarment, and is in full compliance with all statements and requirements.

**30.0 WAIVER/SEVERABILITY:** No waiver of any default hereunder shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this contract. If any provision of this contract is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and said provision shall continue to apply to the extent allowed by said court or, if not so allowed, be deemed severed from this contract entirely.