

PROJECT MANUAL

---

**MARATHON COUNTY 20BM-04C ELEVATOR  
MODERNIZATIONS AT LAKE VIEW  
PROFESSIONAL PLAZA**

---

*1100 Lakeview Drive, Wausau, WI 54403*



Department of Facilities &  
Capital Management

**January 13, 2019**

**DOCUMENT 00 01 10**

**TABLE OF CONTENTS**

**DIVISION 00 – PROCUREMENT REQUIREMENTS**

00 11 16	Invitation to Bid
00 21 13	Instructions to Bidders
00 31 00	Available Project Information / Scope of Work
00 41 00	Bid Form
00 72 00	General Conditions
00 73 10	Marathon County Procurement Policy

END OF DOCUMENT

**DOCUMENT 00 11 16**

OFFICIAL NOTICE TO VENDORS  
MARATHON COUNTY, WISCONSIN  
REQUEST FOR BIDS

Marathon County is issuing a request for bids to solicit qualified contractors for upgrades to the elevator at the Lakeview Professional Plaza located at the North Central Health Care Campus at 1100 Lake View Drive, Wausau, WI 54403.

Interested firms may obtain a copy of the Request for Bid from the Facilities and Capital Management Department, 1000 Lakeview Drive, Suite 300, Door 27, Wausau WI 54403 or on the Marathon County Website; <http://www.co.marathon.wi.us/>.

A Pre Bid Walk Through for interested firms has been scheduled for this project, at **10:00 AM, January 22, 2020** at Marathon County Facilities and Capital Management Department, 1000 Lakeview Drive, Suite 300, Door 27, Wausau WI 54403.

Bids shall be submitted to Troy Torgerson, at the FCM Department at the address indicated above. The envelope containing the Proposals shall bear the name and address of the interested firm and the notation "20BM-04C Elevator Upgrades -Lakeview Professional Plaza".

All bids must be received in writing (faxed or emailed will not be accepted) at the Marathon County Facilities and Capital Management Department 1000 Lakeview Drive, Suite 300, Door 27, Wausau WI 54403 no later than **2:00 pm, February 5, 2020**. Bids received after that date and time will NOT be accepted. Actual receipt by said time is required and deposit in the mail is insufficient.

Bids shall remain firm once submitted and may not be withdrawn for a period of ninety (90) days, subject to provisions for correction of error in the proposal as contained in section 3.05 (1) (g) of the procurement code.

**SECURITY DEPOSIT:**

Bids shall be accompanied by a security deposit in the form of a Bid Bond or certified check in the amount of no less than 10 percent of the Bid Sum. Endorse the Bid Bond or certified check in the name of the Owner as obligee, signed and sealed by the Contractor as principal and the Surety.

After a Bid has been accepted, all securities will be returned to the respective Bidders. For the accepted Bidder, the security deposit will be returned after execution of the Contract. If no contract is awarded, all security deposits will be returned. Include the cost of the Bid security in the Bid Sum.

Marathon County reserves the right to reject, in whole or in part, any and all bids; to waive any technical deficiencies in the bids; to accept the bid and award final contract to the responsible offeror determined to be the most advantageous to Marathon County. The contract shall be awarded in accordance with the terms and conditions of section 3.05 (2) (g) of the procurement code. This solicitation may be canceled if doing so is determined to be in the best interests of Marathon County. Upon award of the contract, all submitted documents become subject to the Open Records Law of the State of Wisconsin.

The General Code of the County of Marathon contains various procurement policies which are applicable to this proposed procurement. These include prohibitions against gratuities and kickbacks.

By: Troy Torgerson, LEED ® AP, Facility Planner  
Facilities & Capital Management Dept.

**INSTRUCTIONS TO BIDDERS**

**1. SUMMARY**

**1.2 WORK IDENTIFIED IN THE CONTRACT DOCUMENTS**

A. The work will be done under single lump sum contract.

**1.3 CONTRACT TIME**

- A. The construction shall begin immediately upon execution of contract documents.
- B. Due to daily usage of the project area throughout the duration of the project, performance of the work under this Contract must be done in accordance of the defined project schedule.
- C. The project shall be Substantially Completed not later than 180 days after award, inclusive of lead times for materials ordered for the project.

**2. BID DOCUMENTS AND CONTRACT DOCUMENTS**

**2.1 DEFINITIONS**

- A. Bid Documents: Contract Documents supplemented with Instructions to Bidders and Bid Form identified herein.
- B. Contract Documents: Defined in General and Supplementary Conditions.
- C. Bid, Offer, or Bidding: Act of submitting a Bid.
- D. Bid Sum: Monetary sum identified by the Bidder in the Bid Form.

**2.2 CONTRACT DOCUMENTS IDENTIFICATION**

A. The Contract Documents are identified by the project name “**20BM-04C Elevator Modernization – Lake View Professional Plaza**” as prepared by the Owner, Marathon County Facilities & Capital Management Department, 1000 Lake View Drive, Wausau, WI 54403 and are enumerated in the Project Manual.

**2.3 AVAILABILITY**

- A. Bid Documents may be reviewed at the office of the Owner.
- B. Electronic sets of Bid Documents can be obtained by each Bidder upon request.
- C. Bid Documents are made available only for the purpose of obtaining Bids for this project. Their use does not grant a license for other purposes.

**2.4 EXAMINATION**

- A. Bid Documents may be viewed at the office of the Owner.
- B. Upon receipt of Bid Documents verify that documents are complete. Notify Owner should the documents be incomplete.
- C. Immediately notify the Owner upon finding discrepancies or omissions in the Bid Documents.

**2.5 QUERIES/ADDENDA**

A. Direct questions by e-mail only (verbal answers are not binding on any party) to the following:

1. Facility Planner Troy Torgerson, LEED AP  
troy.torgerson@co.marathon.wi.us

- B. Addenda may be issued during the Bidding period. All Addenda become part of the Contract Documents. Include resultant costs in the Bid Sum.
- C. Clarifications and requests for determination of equal products must be received by Owner in writing not less than 4 days before date set for receipt of Bids. The written reply, if any, will be in the form of an Addendum issued to all appropriate Bidders.

## 2.6 PRODUCT/SYSTEM SUBSTITUTIONS

- A. Substitute products will be considered if submitted **prior** to the time listed in 2.5.C - 4 days prior to bid date to be reviewed by the owner and noted as "approved equal".
- B. The submittal shall provide sufficient information to determine acceptability of such products.
- C. Provide complete information on required revisions to other Work to accommodate each substitution, the value of additions to or reductions from the Bid Sum, including revisions to other Work.
- D. Provide Products as specified unless substitutions are submitted in this manner and subsequently accepted.

## 2.7 REPRESENTATIONS

- A. By submitting a bid, the Bidder represents that:
- B. Bidder has visited the Project Site and is familiar with the conditions at the site which affect the Contract Sum and the performance of the Work.
- C. All Bid Sums are based on the materials, products, requirements, equipment and systems required by the contract Documents, unless any exceptions or deviations are indicated on the Bid Form.
- D. Bidder agrees to comply with provisions related to conflicts, as specified in the Supplementary Conditions, unless any exceptions or deviations are indicated on the Bid Form.

## 3. SITE ASSESSMENT

### 3.1 SITE EXAMINATION

- A. The Contractor shall visit the project site before submitting a Bid and carefully examine the Contract Documents and their relationship to existing conditions to become thoroughly familiar with the requirements of the Work.  
A scheduled pre bid meeting is set for Tuesday March 13<sup>th</sup>, 2018 at the Facilities and Capital Management Office, 1308 West Street, Wausau WI 54401
- B. The Contractor will not be allowed extra compensation for work required by existing conditions for which through careful examination of the site the Contractor could have become informed prior to submitting a Bid.

### 3.2 SUBCONTRACTORS/SUPPLIERS/OTHERS

- A. The Owner reserves the right to reject a proposed Subcontractor for reasonable cause.
- B. The Contractor shall consult the specifications for each division of the Work to ascertain the extent of the Contractor's work. The Contractor, and the Subcontractors, shall confer and cooperate to serve the best interest of the Work as a whole.

## 4. BID ENCLOSURES/REQUIREMENTS

### 4.1 WITHDRAWAL OF BIDS

- A. Bidders may withdraw, modify or cancel submitted Bids only before the date and time established for the receipt of Bids. Submitted Bids may not be withdrawn, modified or canceled after such date and time.

#### **4.2 BID FORM REQUIREMENTS**

- A. Complete all requested information in the Bid Form.
- B. Refer to Document 00 72 00 – General Conditions.
- C. Refer to Document 00 73 10 – Marathon County Procurement Policy for insurance requirements.

#### **4.3 FEES FOR CHANGES IN THE WORK**

- A. Include in the Bid Form, the fees proposed for changes (both additions and deductions) in the Work.

### **5. BID ACCEPTANCE/REJECTION**

#### **5.1 DURATION OF BIDS**

- A. Bids shall remain open to acceptance by the Owner for a period of time after the Bid closing date as identified on the Bid Form.

#### **5.2 ACCEPTANCE OF BIDS**

- A. The Contract, if awarded, will be awarded to the lowest responsible and responsive Bidder on the basis of the Base Bid, and full consideration of the selected Alternatives, as may be in the best interest of the Owner. In determining responsibility, the Owner will consider the scope of the work involved, time of delivery, competency of Bidder, his ability to render satisfactory service, and past performance.
- B. The Owner reserves the right to reject any or all Bids, or parts thereof, and to award to the Bidder who, in the judgment of the Owner, will best serve the County. A bid which has not been prepared according to the instructions set forth in the Request for Bids, or which does not include a price which is both adequate and reasonable on each and every item named in the bid, may be subject to rejection. Bids may be withdrawn or modified only as allowed pursuant to Section 3.05(1) (g) of the Marathon County Procurement Code.
- C. If two or more Bidders submit identical Bids, the Owner may make award to that Bidder of his choice, and such decision shall be final.
- D. Awards will not be made to any Bidder in default of a Contract with the Owner, or to any Bidder having as his agent or employee any individual previously in default or guilty of misrepresentation.
- E. Bid results may be published in construction periodicals.

#### **5.3 BID BOND**

- A. Bids shall be accompanied by a security deposit in the form of a Bid Bond or certified check in the amount of no less than 10 percent of the Bid Sum. Endorse the Bid Bond or certified check in the name of the Owner as obligee, signed and sealed by the Contractor as principal and the Surety.
- B. After a Bid has been accepted, all securities will be returned to the respective Bidders. For the accepted Bidder, the security deposit will be returned after execution of the Contract. If no contract is awarded, all security deposits will be returned. Include the cost of the Bid security in the Bid Sum.

END OF DOCUMENT

**DOCUMENT 00 31 00**

**AVAILABLE PROJECT INFORMATION / SPECIFICATIONS**

**1. GENERAL**

**1.1 WORK INCLUDED**

A. This document contains information about existing conditions which are pertinent to the Work of this project and area available for the general information of all bidders. The availability of such information shall not relieve any bidder from responsibility to visit the project sites, to become familiar with local conditions under which work is to be performed and to correlate the bidder's observations with the requirements of the bidding documents.

**1.2 OWNER'S DISCLOSURE**

A. Plan is based on field surveys conducted by the Owner and may not represent fully accurate datum. Contractors shall familiarize themselves with existing conditions and account for their observations in bidding and construction.

**1.3 GENERAL NOTES**

A. Scope of work to include all labor equipment and material to modernize the existing elevator(s) at Lake View Professional Plaza, 1100 Lake View Drive, Wausau WI 54403. All new elevator equipment provided shall meet applicable local, state and federal laws and meet ASME A17.1 code requirements. The elevator contractor must clearly define what IS included in Scope of work and what IS NOT included on the bid form. Items not clearly defined will be assumed in the work unless noted on the bid form.

The electrical work required is outside of the elevator contractor scope of work, however, the elevator contractor will be expected to coordinate with Marathon County on the electrical scope of work to identify work required to meet all local, state and federal code requirements for elevators in public facilities to include but not limited to ASME A17.1.

**1.4 BUILDING PLANS AVAILABLE FOR REFERENCE**

- LAKE VIEW PROFESSIONAL PLAZA

**1.5 GENERAL NOTES**

This specification includes all labor, material and equipment necessary to modernize existing elevator the Lake View Professional Plaza, 1100 Lakeview Drive, Wausau, WI 54403

Lake View Professional Plaza Elevator Scope of work includes but not limited to;

1. New programmable microprocessor controller with precise leveling system.
2. New hoistway limit switches and leveling devices
3. New car top inspection station and pit stop switch
4. New machine room and hoistway wiring and traveling cable
5. New fixtures including
  - a. Main car station with position indicators, required fire service features and ADA phone
  - b. Hall pushbutton stations (Qty=1 riser)
  - c. Combination hall lantern / position indicator at Main floor
  - d. Hoistway access switches (top & bottom)
  - e. Jamb Braille plates at each hoistway entrance frame side jamb
6. New hoisting machine, isolation and required block-up beams
7. New AC motor and coupling
8. New rope gripper and mounting
9. New hoist ropes and shackles
10. New car governor and tension weight
11. New governor rope
12. New Platform Safety Assembly
13. New door equipment as follows:
  - a. Door operator, gate switch and clutch with restrictor
  - b. Interlocks, closers and door drives
  - c. Car door hangers & track
14. New car door panel(s)
15. New electronic door edge (Curtain of Light)
16. Machine room layout
17. Alteration permit, inspections and testing

**DOCUMENT 00 41 00**

**BID FORM**

**Owner:** County of Marathon  
Facilities & Capital Management  
Department  
1000 Lake View Drive Suite 300  
Wausau, WI 54403

**Project:** Marathon County  
Elevator Modernization 20BM-04C  
Lake View Professional Plaza,  
1100 Lake View Drive, Wausau  
WI 54403

Date: \_\_\_\_\_

**Bid Submitted by:**

Full Name: \_\_\_\_\_

Full Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

- A. Having examined the Place of the Work and all matters referred to in the Instructions to Bidders and the Contract Documents for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Sum of:

**LAKE VIEW PROFESSIONAL PLAZA ELEVATOR MODERNIZATION -TO INCLUDE ALL LABOR AND MATERIALS TO COMPLETE THE PROJECT. (ADDITIONAL PRODUCT INFORMATION AND SCOPE OF WORK CAN BE ATTACHED TO DOCUMENT).**

\_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

**PART 2. VOLUNTARY ALTERNATE BIDS (IF NONE PLEASE INDICATE WITH N/A OR NONE)**

- A. **ALTERNATE BID #1: (DETAILED DESCRIPTION REQUIRED INCLUDING ATTACHMENTS)**

\_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

- B. **PROPOSED PROJECT SCHEDULE (INSERT TENTATIVE SCHEDULE DATES – MAY BE INCLUDED AS AN ATTACHMENT)**

\_\_\_\_\_  
\_\_\_\_\_

**PART 3. ADDENDA (IF APPLICABLE)**

- A. The following Addenda have been received. The modifications to the Bid Documents noted therein have been considered and all costs thereto are included in the Bid Sum.

Addendum # \_\_\_\_\_ Dated \_\_\_\_\_ Addendum# \_\_\_\_\_ Dated \_\_\_\_\_

Addendum # \_\_\_\_\_ Dated \_\_\_\_\_ Addendum# \_\_\_\_\_ Dated \_\_\_\_\_

**PART 4. SUBCONTRACTORS/SUPPLIERS (complete only if applicable)**

A. We propose to employ the following subcontractors and suppliers for the stated categories of work within the contract for General Construction.

<b>Category of Work</b>	<b>Subcontractor</b>

**PART 5. BID FORM SIGNATURE(S)**

The Corporate Seal of: \_\_\_\_\_  
(Print the full name of your Business)

was hereunto affixed in the presence of: \_\_\_\_\_  
(Signature - Authorized signing officer)

\_\_\_\_\_  
(Printed Name and Title)

(Seal)

\_\_\_\_\_  
(Signature - Authorized signing officer)

\_\_\_\_\_  
(Printed Name and Title)

If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

END OF DOCUMENT

**DOCUMENT 00 72 00**

**GENERAL CONDITIONS**

**ARTICLE 1 - GENERAL PROVISIONS**

**1.1 THE CONTRACT**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification.

**1.1.1** The Contractor's completed Bid Form shall be included in the Contract Documents.

**1.2 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided by the Contractor to fulfill the Contractor's obligations.

**1.3 THE INTENT**

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

**1.3.1** All Work shown and specified is intended to be included in the Contract. Therefore, Work shown on the Drawings and not specified shall be included in the Contract, and Work identified in the Specifications and not shown on the Drawings shall be included in the Contract.

**1.3.2** It shall be the responsibility of the Contractor to establish the extent of the work of each Subcontractor and each trade.

**1.3.3** If a conflict in Contract Documents occurs the following shall apply:

1.3.3.1 Addenda or modifications of any nature to the drawings and specifications take precedence over the original Contract Documents.

1.3.3.2 Where a conflict occurs in the Documents, not reconciled by Addenda, the installation of greater quantity and better quality shall be provided.

1.3.3.3 Where a conflict occurs between the Specifications and the Drawings, not reconciled by Addenda, the installation of greater quantity and better quality shall be provided.

1.3.3.4 Where work or materials are shown or specified in more than one location in the contract documents which results in a duplication of work by more than one Contractor, the Contractors shall include the cost for such work or materials in their contracts and the Owner shall determine which Contractor shall provide the work or materials and which Contractor shall provide a credit to the Owner.

**1.3.4** Drawings are in part diagrammatic, intended to convey the scope of the work, and indicate general arrangement of materials and equipment. Drawings are not necessarily to scale and the printed dimensions should be used, not scaled measurements. Each Contractor shall become familiar with all conditions affecting the Contractor's work and shall consult all construction drawings and specification sections.

- 1.3.5 All details and notes on the Drawings shall be considered to be typical and what is shown or noted in one instance shall apply to all similar and related instances whether or not the detail or note is repeated.
- 1.3.6 Small details and related material not usually drawn or specified, but necessary for the proper installation and completion of the Work, shall be furnished and installed by the Contractor without extra charge, the same as if specified in the Project Manual or shown on the Drawings.
- 1.3.7 These Drawings and Specifications are intended for use only for this Project on this site and should not be used for other projects on the same or different site.

#### **1.4 THE OWNER**

The Owner as referenced in the Contract Documents is Marathon County, also referred to elsewhere in the Contract Documents as "The County". The agent for the County is the Marathon County Facilities & Capital Management Department.

#### **1.5 THE CONTRACTOR**

The term "Contractor" when used in any section of the specifications, means the Contractor who has a contract directly with the Owner.

### **ARTICLE 2 - OWNER**

#### **2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

#### **2.2 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

#### **2.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to correct such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due the Contractor.

#### **2.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

2.4.1 The Owner reserves the right to perform construction or operations related to the project with the Owner's own forces, and to award separate contracts in connection with other portions of the project.

2.4.2 The Contractor shall coordinate and cooperate with separate contractors employed by the Owner.

- 2.4.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

## **ARTICLE 3 - CONTRACTOR**

### **3.1 EXECUTION OF THE CONTRACT**

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Owner.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

**3.3.2** The Contractor, as soon as practicable after award of the contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Owner will promptly reply to the Contractor in writing if the Owner, after due investigation, has reasonable objection to the subcontractors or suppliers listed.

**3.3.3** The Contractor shall have a qualified superintendent on the construction site at all times while work on the Project is being performed. The Owner shall have the right to review the qualifications of the Contractor's superintendent and reject the superintendent at Owner's discretion.

### **3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

**3.4.2** The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

### **3.5 WARRANTY**

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

**3.5.1** Where warranties are specified in the individual specification sections for products, materials, systems, and equipment, provide the specified warranties from the supplier of

the products, materials, systems, and equipment. In the event the specified warranties are not available from the suppliers, the Contractor shall provide the specified warranties unless the Contractor has stated an exception in the Bid Form.

### **3.6 PERMITS, FEES AND NOTICES**

**3.6.1** The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

**3.6.2** The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to laws, statutes, and ordinances, building codes, and rules and regulations without notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

### **3.7 SUBMITTALS**

The Contractor shall promptly review, approve in writing and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

### **3.8 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

### **3.9 CUTTING AND PATCHING**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

### **3.10 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work.

### **3.11 INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor agrees to release, indemnify, defend, and hold harmless Marathon County, their 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, resulting from or arising out of the performance of contractor, its officers, officials, employees, agent or assigns. Marathon County does not waive, and specifically reserves its right to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.

## **ARTICLE 4 - OWNER'S ADMINISTRATION OF CONTRACT**

- 4.1** The Owner will provide administration of the Contract as described in the Contract Documents.
- 4.2** The Owner will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.
- 4.3** The Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.
- 4.4** Based on the Owner's observations and evaluations of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor.
- 4.5** The Owner will have authority to reject Work that does not conform to the Contract Documents.
- 4.6** The Owner will promptly review and approve or take appropriate action upon Contractor's submittals such as Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- 4.7** The Owner will promptly interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Contractor.
- 4.8** Interpretations and decisions of the Owner will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

## **ARTICLE 5 - CHANGES IN THE WORK**

- 5.1** After execution of the Contract, changes in the Work may be accomplished by Change Order or by order for a minor change in the Work. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- 5.2** A Change Order shall be a written order to the Contractor signed by the Owner to change the Work, Contract Sum or Contract Time.
- 5.3** The Owner will have authority to order minor changes in the work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be written orders and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.
- 5.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

## **ARTICLE 6 - TIME**

- 6.1** Time limits stated in the Contract Documents are of the essence of the Contract.
- 6.1.1** Contract time is identified in Document 00 21 13 – Instructions to Bidders.
- 6.2** If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

## **ARTICLE 7 - PAYMENTS AND COMPLETION**

### **7.1 CONTRACT SUM**

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **7.2 APPLICATIONS FOR PAYMENT**

- 7.2.1** At least thirty days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the Agreement. Such application shall be supported by such data substantiating the Contractor's right to payment as the Owner may reasonably require and reflecting retainage if provided for elsewhere in the Contract Documents.
- 7.2.2** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payments have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.
  - 7.2.2.1** Submit two (2) copies of each Application for Payment.

### **7.3 PROGRESS PAYMENTS**

- 7.3.1** The Owner shall make payment in the manner provided in the Contract Documents.
- 7.3.2** The Contractor shall promptly pay each Subcontractor and material supplier, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such entities' portion of the Work.
- 7.3.3** The Owner shall not have responsibility for the payment of money to a Subcontractor or material supplier.
- 7.3.4** A progress payment, or partial or entire use or occupancy of the project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

## **7.4 SUBSTANTIAL COMPLETION**

**7.4.1** Substantial Completion is the state in the progress of the Work when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**7.4.1.1** At the stated Substantial Completion of the Work, a Punch list comprised of the Contractor's list of Work to be completed and the Owner's additions to the list shall be issued.

## **7.5 FINAL COMPLETION AND FINAL PAYMENT**

**7.5.1.** Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, Owner will promptly issue a final Payment.

**7.5.1.1.** Completion or correction of all items on the punch list by the Contractor shall not waive the Owner's right to have other omissions and defects corrected at the Contractor's expense when such omissions and defects are discovered after completion of the Punch list items.

**7.5.2** Final payment shall not become due until the Contractor submits to the Owner data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

**7.5.3** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY**

### **8.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall promptly remedy damage and loss of property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

## **ARTICLE 9 - CORRECTION OF WORK**

**9.1** The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work.

**9.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

**9.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it and the Contractor shall reimburse the Owner for the cost of correction.

**ARTICLE 10 - MISCELLANEOUS PROVISIONS**

**10.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

**10.2 TESTS AND INSPECTIONS**

**10.2.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time.

**10.2.2** If the Owner requires additional testing, the Contractor shall perform these tests.

**10.2.3** The Owner shall pay for tests except for testing Work found to be defective for which the Contractor shall pay.

**10.3 GOVERNING LAW**

The Contract shall be governed by the law of the State of Wisconsin.

**ARTICLE 11 - TERMINATION OF THE CONTRACT**

**11.1 TERMINATION BY THE CONTRACTOR**

If the Owner fails to make payment when due or substantially breaches any other obligation of this Contract, following seven days' written notice to the Owner, the Contractor may terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, construction equipment and machinery, including reasonable overhead, profit and damages.

**11.2 TERMINATION BY OWNER**

**11.2.1** The Owner may terminate the Contract if the Contractor:

11.2.1.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

11.2.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

11.2.1.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

11.2.1.4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

**11.2.2** When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's survey, if any seven days' written notice, terminate employment of the Contractor and may:

11.2.2.1 take possession of the site and of all materials thereon owned by the Contractor; or

11.2.2.2 finish the Work by whatever reasonable method the Owner may deem expedient.

**11.2.3** When the Owner terminates the Contract for one of the reasons stated in Subparagraph 11.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**11.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

**11.2.5** The Contract may also be terminated by the Owner according to the provisions set forth in "Marathon County Procurement Policy" included in the Project Manual.

## **ARTICLE 12 – INSURANCE**

### **12.1 CONTRACTOR'S INSURANCE**

**12.1.1** The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance as set forth in Section 00 73 10 "Marathon County Procurement Policy" in the Project Manual.

END OF DOCUMENT

## MARATHON COUNTY STANDARD TERMS AND CONDITIONS

- 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. Contractors 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 Contractor's letterhead, 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 Contractor 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 Contractor.
- 7.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified. Failure of the Vendor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render Contractor 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 Contractor 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 Contractor 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 Marathon County and Contractor 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. Contractor 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 Contractor 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 Contractor shall execute and maintain its work so as to avoid injury or damage to any persons or property. Contractor shall comply with the requirements and specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its work, Contractor 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 Contractor 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. Contractor 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:** Contractor 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 Contractor 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, Contractor 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 Contractor.

14.2 **General Liability, Professional Liability and Property Damage Insurance.** Contractor 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 Contractor, 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, \$2,000,000 per occurrence and \$2,000,000 in aggregate.
- Automobile Liability \$2,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and property damage.
- Excess Liability Coverage, \$5,000,000 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.
- Builders Risk Insurance shall be provided by Marathon County in an amount equal at all times to the full replacement value include change orders, and cost or debris removal for any single occurrence

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:** Contractor shall furnish the County with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that Contractor 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 Contractor by certified mail. If the Contract is terminated by the County as provided herein, Contractor 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 Contractor 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 Contractor 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 Contractor 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 scope of work under this contract may be assigned or delegated without the prior written consent of Marathon County.

**18.0 PATENT INFRINGEMENT:** The Contractor 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 Contractor'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 Contractor 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 Contractor's refusal of permission to release information identified as confidential or proprietary, Contractor 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 Contractor 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, Contractor agrees to keep all such data confidential and to execute any reasonable agreement to assure Marathon County that Contractor 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 Contractor or its agents, employees, successors, assigns or subcontractors. Contractor shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by Contractor, 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:** Contractor 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 Contractor's officers, officials, employees, agents or assigns. Marathon County hereby agrees to release, indemnify, defend, and hold harmless Contractor, 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 provisions. Contractor 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 Contractor, its officers, agents and employees, in the performance of this Contract, shall act in the capacity of an independent contractor and not as an officer, employee or agent of Marathon County. The Contractor 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 Contractor. Neither Marathon County nor Contractor will represent itself as the agent or legal representative of the other or as partner or joint venture 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, Contractor 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 venture with, or partner of, Marathon County.

**28.0 NON-DEBARMENT CLAUSE:** Contractor 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. Contractor 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:** Contractor 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