

AGREEMENT

THIS AGREEMENT, entered into this 15 th day of May 2009 by and between Milwaukee County Department of Health and Human Services, Behavioral Health Division, 9455 Watertown Plank Road, Milwaukee, WI, 53226, hereinafter designated as "County," and A'viands, LLC, 1751 County Road B West, Roseville, MN 55113 designated as "Contractor."

Contact Person: Perry M Rynders
Phone Number: (651) 203-3250
Federal ID Number: 39-1084787

WITNESS THAT:

WHEREAS, the Contractor has substantial skills and experience as a provider of dining services and has performed such services in an independently established profession in which Contractor is customarily engaged;

Now, therefore, it is agreed to, by and between County and Contractor, which the Contractor's activities shall include, but not be limited to:

Provision of services as described in the Behavioral Health Division Request for Proposal No. 6513-1509, any addendums and written responses to questions ("the RFP") which is attached hereto as Exhibit B and also incorporated herein by reference, and A'viands response dated February 20, 2009 ("the Response" which is attached hereto as Exhibit A and incorporated herein by reference).

AGREEMENT IN GENERAL

Under no circumstances will Contractor be considered or any of Contractor's employees be considered an employee of the County relative to the services performed under this Agreement.

Provision of these services is to commence on or about **May 15, 2009**, and end on **December 31, 2012**, with an option for two one-year renewals. Milwaukee County agrees to pay the Contractor under this agreement an amount not to exceed \$3,500,000.00 for the first seven months (ending December 31, 2009). Subsequent year's funding will be determined and approved through the annual County budget process. Price changes will become effective January 1 of each Agreement year. Contractor will bill at a rate per meal according to the attached schedule along with a separately invoiced list of supplements, nourishments and catering. Itemized documentation is to be provided for all services billed.

Payment for services under this agreement will be made upon presentation of monthly itemized invoices for services provided.

County agrees to compensate Contractor within thirty (30) days of the date of Contractor's invoices for dining services.

Any additional expense incurred must have prior approval by County.

Any equipment purchased by County for the completion of the above services remains the sole property of County. A listing of such inventory must be submitted before final payment can be made.

The Contractor will provide the Behavioral Health Division with position descriptions and

competency verification for any employees, who perform core functions in the service of this agreement.

All records of the Contractor covering this agreement shall be available for audit by the Milwaukee County Auditing Department and/or the Secretary or Comptroller General of the United States, until four (4) years have expired after the services have been furnished.

Contractor agrees to maintain records in such form and for such duration as may be required by Federal, State and Local statutes and regulations. It is understood that the records maintained by Contractor are and shall remain the property of the Contractor, and will not be removed or transferred from the Contractor's possession, except in accordance with the Contractor's policies and procedures, or as required by law.

The Contractor and County agree to maintain, to the extent legally required, the confidentiality of information contained in the medical records of patients, and except for the dissemination of such records to authorities as required by law, not to disclose such information without the written consent of the individual authorized to release such records. This provision shall survive the termination of this agreement.

In accordance with Chapter 56.30 of the General Ordinances of Milwaukee County, the following provisions shall apply:

- a. The Contractor shall permit the authorized representatives of the County Auditor, after reasonable notice, the right to inspect and audit all data and records of Contractor related to carrying out the agreement for a period of up to four (4) years after completion of the Agreement.
- b. The Contractor shall obtain prior written Milwaukee County approval for all sub-contractors and/or associates to be used in performing its contractual obligations.
- c. The Contractor shall enter into a written contractual agreement with its County approved sub-contractors and/or associates which binds the sub-contractor to the same audit Agreement terms and conditions of the prime Contractor.

Contractor may, at its option, terminate this agreement upon the failure of the County to pay any amount, which may become due hereunder for a period of thirty (30) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination, including any retainage.

If Contractor fails to fulfill its obligations under this agreement in a timely or proper manner, or violates any of its provisions, County shall thereupon have the right to terminate it by giving thirty (30) days written notice of termination of agreement, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the agreement.

Either party may terminate this agreement at any time for any reason by giving the other party one hundred and twenty (120) days written notice by Certified Mail of such termination. In the event of

said termination, Contractor shall continue operations as specified until the transition to a new contractor is completed as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee County Board of Supervisors and County Executive fail to appropriate funds required to support the agreement.

In accordance with Section 56.17 of the General Ordinances of Milwaukee County, adopted by the Milwaukee County Board of Supervisors on March 11, 1969, the following provisions shall apply:

- a. In the performance of work under this agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age, sex, or handicap, which shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor will post in conspicuous places, available for employees and applicants for employment, notices to be provided by the County, setting forth the provisions of the non-discrimination clause. A violation of this provision shall be sufficient cause for the County to terminate the agreement without liability for the uncompleted portion or for any materials or services purchased or paid for by the Contractor for use in completing the agreement.

No agreement by or on behalf of Milwaukee County shall be let to any party whose name appears on the list of ineligible Contractors maintained by the Equal Opportunities Division of the State of Wisconsin.

None of the funds, materials, property or services provided under this agreement shall be used in any way contrary to the regulations in Section 501 (c)(3)...509(a) of the Internal Revenue Code which deals with the prohibiting of political activity.

INDEMNITY

The Contractor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any negligent act or omission of the Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this agreement.

Contractor shall indemnify and save County harmless from any award of damages and costs against County for any action based on U.S. Patent or Copyright infringement regarding computer programs involved in the performance of the tasks and services covered by this Agreement.

INSURANCE

Contractor agrees to provide evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws and/or vicarious liability arising from employees, board, or volunteers. Such evidence shall include insurance coverage for Worker's Compensation claims as required by the State of Wisconsin, Commercial General Liability, occurrence based (which includes board, staff, and volunteers), Automobile Liability, Environmental Liability and Professional Liability in the minimum amounts listed below. It is expressly understood that the indemnification obligation, however, shall not be reduced in any way by existence or nonexistence, limitations, amount or type of damages, compensation or benefits payable under Workers Compensation laws or other insurance provisions.

Automobile insurance that meets the minimum limits as described in the Agreement is required for all Contractor vehicles (owned, non-owned, and/or hired). In addition, if any employees of the Contractor will use their personal vehicles to transport Milwaukee County employees, representatives or clients, or for any other purpose related to the Agreement, those employees shall have Automobile Liability Insurance providing the same liability limits as required of the Contractor through any combination of employee Automobile Liability and employer Automobile or General Liability Insurance which in the aggregate provides liability coverage, while employee is acting as agent of employer, on the employee's vehicle in the same amount as required of the Contractor.

Contractor shall maintain Professional Liability coverage as listed below. Treatment providers including psychiatrists, psychologists and social workers who provide treatment off premises must obtain General Liability coverage (on premises liability and off-premises liability), to which Milwaukee County is added as an additional insured.

It being further understood that failure to comply with insurance requirements might result in suspension or termination of the Agreement.

Type of Coverage	Minimum Limits
<u>Wisconsin Workers' Compensation</u> or Proof of all States Coverage	Statutory
<u>Workers' Compensation:</u> State of Wisconsin, including Employer's Liability coverage. Coverage shall be modified to include a Waiver of Subrogation in favor of Milwaukee County, as well as including their directors, officers, agents and employees.	
<u>Employers' Liability</u>	\$100,000/\$500,000/\$100,000
<u>Commercial General Liability</u>	
Bodily Injury & Prop. Damage	\$1,000,000 per occurrence
Personal Injury	\$1,000,000 per person
Contractual Liability	\$1,000,000 per occurrence
Fire Legal Liability	\$5,000,000 per occurrence
Aggregate Limit	\$6,000,000
<u>Automobile Liability</u>	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos – Owned, Non-Owned and/or Hired	
Uninsured Motorists	Per Wisconsin Requirements
<u>Excess Liability</u>	\$6,000,000 Annual Aggregate
<u>Professional Liability</u>	
Other Licensed Professionals	\$1,000,000 Per Occurrence \$3,000,000 Annual Aggregate, or Statutory limits whichever is higher

Should the statutory minimum limits change, it is agreed the minimum limits stated herein shall automatically change as well.

Milwaukee County, as its interests may appear, shall be named as, and receive copies of, an

“additional insured” endorsement, for general liability, automobile insurance, environmental liability and umbrella/excess insurance. Milwaukee County must be afforded a thirty day (30) written notice of cancellation or non-renewal. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by county for the duration of this agreement.

Exceptions of compliance with “additional insured” endorsement are:

Transport companies insured through the State “Assigned Risk Business” (ARB).
Professional Liability where additional insured are not allowed.

If Contractor’s Professional Liability insurance is underwritten on a Claims-Made basis, the Retroactive date shall be prior to or coincide with the date of this agreement, the Certificate of Insurance shall state that *professional malpractice or errors and omissions coverage, if the services being provided are professional services coverage* is Claims-Made and indicate the Retroactive Date. Contractor shall maintain coverage for the duration of this agreement and for five (5) years following the completion of this agreement.

It is also agreed that on Claims-Made Professional Liability policies, either Contractor or County may invoke the tail option on behalf of the other party and that the Extended Reporting Period premium shall be paid by the Contractor.

Binders are acceptable preliminarily during the provider application process to evidence compliance with the insurance requirements.

All coverage shall be placed with an insurance company approved by the State of Wisconsin and rated “A” per Best’s Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions, shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the Milwaukee County Risk Manager for approval prior to the commencement of activities under the Agreement.

Milwaukee County Risk Manager
Milwaukee County Courthouse – Room 302
901 N. 9th St.
Milwaukee, WI 53233

The insurance requirements contained within this agreement are subject to periodic review and adjustment by the County Risk Manager. In the event additional or enhanced coverages are required, pricing may be modified.

SCOPE OF SERVICES

This Agreement will provide food service for all Milwaukee County BHD contracted facilities as included in the RFP. In the event a facility’s services are dropped or modified, pricing adjustments may be made to the remaining facilities.

Through this Agreement, Contractor, will operate the BHD central kitchen utilizing the cook-chill technology, as to efficiently support all present and future County operated facilities. The Contractor will be required to produce all bulk food using cook-chill whenever appropriate. The Contractor will be responsible for all procurement; preparation, serving, and cleaning associated with food service

in all designated County or contracted facilities as delineated in the RFP.

The Contractor shall specifically perform all of the tasks and achieve the objectives set forth in the Response, and the RFP. In the event of a conflict, this Agreement shall govern, followed by Contractor's Response attached as Exhibit A and the RFP attached as Exhibit B, in that order.

STAFFING

Contractor shall provide, at its own expense, all personnel required in performing the services required of them under this Agreement. Such personnel shall not be the employees of, or have any other contractual relationship with, the County relative to the services provided under this Agreement. The Contractor will conduct background checks on all staff that the Contractor proposes to assign to the project; any staff proposed by Contractor who fails the background check will not be permitted on or in any County facility by the Contractor.

OFFICE SPACE AND OTHER SUPPORT TO BE PROVIDED BY COUNTY

The Contractor will provide all supplies needed for execution of its responsibilities under the Agreement. The Contractor agrees that all personal supplies and personal equipment located on the premises shall be at the risk of the Contractor only. The County shall not be liable for any injury or damage thereto or loss or theft thereof. Any furniture or equipment provided by the Contractor must be inventoried including location and a copy of that inventory provided to BHD Agreement administration.

The County will provide the designated office space in the Milwaukee County BHD Food Service Building production kitchen and main hospital building trayline, and furnishings as listed in the Request for Proposal, attached as Exhibit B. Mechanical equipment space within the Food Service Building will not be available for use by the Contractor and will be secured by the County. The County will provide two master telephone lines in the food service. Any additional local, long distance, and DSL service must be arranged and provided for via the County's contracted telephone company at the Contractor's expense. Contractor may use county telephones for local telephone calls, including the inter-County telephone service for calls to other County Department of Health and Human Services (DHHS) buildings, Courthouse, Courthouse Annex, and other Milwaukee County facilities. Contractor shall not utilize the County Telephone System, since said service is understood to be available only to County personnel for County business. Long distance calls placed or received by Contractor or its officers, agents, and employees of Contractor shall not be directly billed to County. The County, upon request, retains the right to audit all phone charges for security purposes.

The County will provide all equipment needed for the execution of the agreement. The County warrants that all food service equipment necessary for the effective and efficient operation of the services contemplated under this Agreement is present at the facilities and will be made available to Contractor in good repair and working order and are compliant with all regulatory requirements including OSHA and safety standards. In the event, upon commencement of services by Contractor, there are deficiencies in the equipment, the County authorizes Contractor to remedy this and be reimbursed by the County for any and all expense incurred by the Contractor in the remedy. Any and all such provisions will be the property of the County upon proper reimbursement to Contractor. Once the equipment has been brought to this state, Contractor shall be responsible for equipment repair and maintenance as required in the RFP. Capital purchases deemed necessary in future years will purchased via the means deemed best available at the time, either by Milwaukee County or by the Contractor with the cost amortized out through the remainder of the Agreement so that the item purchased is the sole property of the County at the end of the Agreement term. For each such purchase that the Contractor funds, an amendment to this Agreement will be created to define the

payment schedule. The Contractor will take all reasonable and prudent measures to assure the County that its equipment is properly used and maintained as required by the RFP attached as Exhibit B. The cost of maintaining the equipment is the sole responsibility of the Contractor. General maintenance of the building and structure, including elevators, is the sole responsibility of the County. County agrees to provide maintenance on a regular and prompt basis as needed.

Storage of any supplies or materials considered hazardous must be in compliance with all applicable regulations and with the approval of Milwaukee County Behavioral Health Division.

BEHAVIORAL HEALTH DIVISION POLICIES

Contractor shall comply with all relevant MCBHD policies relating to infection control, client rights, patient/staff relationships, and bloodborne pathogens. Specifically, employees shall be free from communicable disease, exhibit immunity to Rubella, and receive annual TB testing. Furthermore, Contractor shall support client rights in accordance with HFS 94 and Chapter 51 of the Wisconsin State Statutes and maintain confidentiality of MCBHD clients. Confidentiality is applicable during working and non-working hours. Any violation of MCBHD policies may result in elimination of that employee working on MCBHD accounts.

Contractor shall maintain written verification for each employee who cares for and/or has direct contact with MCBHD patients and/or their property.

Contractors must be in compliance with MCBHD's administrative policies, standards, practices, and regulations relating to:

1. Patient Abuse, WI. Statute 940.29, BHD 12/9/03 Policy on Reporting and Investigation of Caregiver Misconduct, and the Wisconsin Caregiver Program, as outlined at: <http://www.dhfs.wisconsin.gov/caregiver>. Compliance with Wisconsin Caregiver Program will be audited prior to Agreement award.
2. Patient Rights Policy and Procedure dated 3/14/97 & Patient Rights, Organization Ethics, and Ethical Issue Resolution dated 3/23/00
3. Patient/Staff Relationships (General and Sexual Ethics) dated 2/27/97
4. Patient Grievance/Complaint Policy
5. MCBHD Code of Ethics
6. Workplace Violence Prevention
7. Identification Badge Policy
8. Use of Technologies
9. Smoke Free Behavioral Health Division
10. Confidentiality Procedure – Client Information dated 10/95. Contractor shall comply with the requirements of implementing regulations at 45 Code of Federal Regulations Parts 160-64 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

11. Infection Control

- The Contractor shall ensure that employees working at the MCBHD have demonstrated evidence of freedom from communicable disease.
- The Contractor shall ensure that employees working at the MCBHD have exhibited immunity to Rubella and receive annual TB testing.
- The Contractor shall ensure that employees working at the MCBHD practice infection control procedures, such as hand washing, universal blood and body fluid precautions, and the cleaning/disinfection of patient care equipment.
- The Contractor shall provide copies of policies and procedures addressing infection control procedures relating to employee infection control practices, Rubella and requirements for annual TB testing.

12. Blood borne Pathogens

- Contractor shall have a written Exposure Control Plan in compliance with Occupational Safety and Health Administration (OSHA) Regulation 29 CFR 1910.1030, State of Wisconsin Statue 101.055, and the U.S. Public Health Service. All contract employees shall comply with the plan and any MCBHD policies as required.

13. Hazard Communication Program

- Contractor shall have a written Hazard Communication Program in compliance with Occupational Safety and Health Administration (OSHA) Regulation 20 CFR 1910.1200 Hazard Communication Standard. All contract employees are to comply with the Plan and any MCBHD policies as required.

Proof of documentation attesting to the fact that staff understand and will abide by these policies must be produced within 2 hours of request. Compliance with the policies and requirements will be audited annually.

PERFORMANCE BOND

Contractor will provide a performance bond in an amount not less than two hundred fifty thousand dollars (\$250,000.00). The County (Obligee) will accept an annual performance bond; however, neither non-renewal (or cancellation, if applicable) by the Surety, nor failure or inability of the Principal to file a replacement bond in the event of the Surety exercises its right to not renew this bond, shall itself constitute a loss to the Obligee recoverable under this bond or any extension thereof. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in the bond and this Agreement, then the terms of the bond shall prevail.

REPORTS

Contractor shall provide a written progress reports to the County on a quarterly basis. The reports will be submitted in writing, within 15 days of each fiscal quarter. The reports shall include, but limited to;

- A complete accounting of meals served by diet, sack meals, snacks/nourishments and supplements
- Detail of all preventative maintenance performed on each piece of equipment including type of service, date and name of firm utilized.

- Detail of all repairs performed on each piece of equipment
- An assessment of the overall program strengths and weaknesses, as well as recommendations for improvement of food service, cost control or other areas.

OWNERSHIP OF DATA

Upon completion of the work or upon termination of the Agreement, it is understood that any reports, information and data, given to or prepared or assembled by Contractor under this Agreement shall not be made available to any individual or organization by Contractor without the prior written approval of County.

No reports or documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

PENALTIES FOR NON AND PARTIAL PERFORMANCE

If after written complaints have been submitted to the Contractor by the BHD in accordance with Section 6.15 of the RFP and if the Contractor fails to resolve said written complaints in accordance with the procedures provided in Section 6.15 of the RFP and the BHD determines that one or more substantial Agreement violations continue to occur within a rolling twelve (12) month period, the BHD shall have the right to require the Contractor to issue monthly billing credits commensurate with the value of the loss plus fifty (50) percent or \$2,000 whichever is greater. Those violations considered substantial to the BHD and a list of liquidated damages are as follows:

1. Unauthorized meal changes, \$500; repeat occurrence \$1,000
2. Improper temperature maintenance, holding or service, \$500; repeat occurrence \$1,000
3. Breach of security regulations, \$1,000; repeat occurrence \$1,000
4. Inadequate portions, and credit for improper meals, \$1,000; repeat occurrence \$1,000
5. Failure to maintain minimum staffing levels on all shifts and outlying facilities, \$1,000; repeat occurrence \$2,000

Additional violations include:

The Contractor has failed to prepare all or some portions of the meal using the specified recipe, ingredient amounts proportionate to the number of persons to be served, improper preparation and/or rethermalization procedures (for cook-chill, advance preparation and convenience items), improper storage techniques and other points directly related to adherence to serving the menu specified.

The Contractor, through improper or inconsistent supervision, has failed to provide the specified portions to meal recipients.

The Contractor has failed to adhere to its minimum purchase specifications.

The Contractor has failed to assure that all of its food processors, manufacturers and vendors meet all legal mandates and food service industry best practices.

The Contractor has made two or more unauthorized or non-comparable full or partial menu substitutions.

The Contractor has, through circumstances within its control, caused all or portions of a meal to become contaminated.

The Contractor has, through circumstances within its control, failed to serve the meal specified within 20 minutes of the scheduled time.

The Contractor has, through circumstances within its control, failed to maintain the kitchens, food preparation and storage equipment, space and all preparation and service utensils in a clean, sanitary manner.

The Contractor has failed to maintain accurate records concerning the service of meals, proper temperature maintenance, employee compliance requirements and related documentation.

The Contractor has, through circumstances within its control, failed to prevent any damage to BHD property, buildings or equipment.

The Contractor has, through circumstances within its control, failed to provide active supervision of the tray/food cart delivery processes.

In the event one or more of these situations have taken place, the BHD shall direct the Contractor to issue a credit for up to the full value of the meal plus fifty (50) percent times the number of meals requested or \$2,000 whichever is greater. These credits will continue to be issued until such time that all of the aforementioned violations have been corrected to the BHD's satisfaction.

No penalties will be assessed in any case where the violation is not within the complete control of the Contractor or where the violation is due in whole or in part to an obligation of the County that has not been met.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION SPECIFICATIONS

1. The successful consultant/service provider shall comply with CFR 49 Part 23 and 26 and Chapter 42 of the Milwaukee County Ordinances, which requires Good Faith Efforts (GFE) to achieve participation of certified Disadvantaged Business Enterprise (DBE*) firms on all USDOT and Milwaukee County funded professional service contracts. In accordance with this Milwaukee County policy and US DOT requirements, the consultant/service provider shall ensure that DBEs have an opportunity to participate in this project/contract. **Refer to item (8) of this section for the specific DBE participation Agreement goal.**
2. The Community Business Development Partners (CBDP) Office of Milwaukee County is authorized to make the determination that consultant/service provider has made a good faith effort (GFE) to achieve the required DBE participation by doing either of the following:
 - a. Shows evidence that it has met the DBE participation by submitting a complete Commitment to Subcontract to DBE Firms (**DBD-014PS form**); or
 - b. Documents that it made good faith efforts to meet the DBE participation goal, even though it did not succeed in achieving it. In this case, the consultant/service provider must submit the

* The term "DBE" means small business concerns known as Disadvantaged Business Enterprise (DBE) firms owned at least 51% by socially and economically disadvantaged individuals, and certified by Milwaukee County under CFR 49 Part 26.

Certificate of Good Faith Efforts (DBD-001PS form) and all relevant documentation to the CBDP office for its GFE determination within three (3) working days of notification of being the successful proposer.

3. The efforts employed by the consultant/service provider should be those that one could reasonably expect a consultant/service provider to take if the consultant/service provider were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Agreement goal. Mere pro forma efforts are not good faith efforts to meet the DBE Agreement requirements. (49 CFR §26.53 and Appendix A to 49 CFR Part 26 which provides guidance regarding GFE). (Refer to Milwaukee County DBE Provisions governing GFE attached to this document.)
4. In the event the CBDP Office determines that the consultant/service provider has failed to meet the GFE requirements, the consultant/service provider is entitled to appeal this determination. The provisions of 49 CFR §26.53(d) apply to such an appeal. A request for administrative reconsideration must be sent within three (3) calendar days of receiving written notice from the CBDP office of the failure to meet the GFE requirement. The request should be sent to:

CBDP Office
City Campus, Room 830
2711 West Wells Street
Milwaukee, WI 53208
5. Prime consultant/service provider must submit with its proposal, the Sub-consultant Information Sheet (**DBD-002PS form**).
6. When evaluating a contractor's proposed DBE commitment (**DBD-014PS form**), Milwaukee County reserves the right to request any documentation from both the prime consultant and the listed DBE subcontractors. If the information requested is not submitted by the contractor within the time specified for such submission, Milwaukee County may award the Agreement to the next lowest responsive, responsible proposer. The consultant/service provider shall prepare and submit accurate and timely forms and reports on DBE utilization to the Community Business Development Partners (CBDP) Office. These shall include, but not be limited to, Milwaukee County Commitment to Subcontract with DBE Firms form, DBE Utilization Reports, and Sub-Consultant Information Sheet as directed. Failure to submit forms and reports as prescribed herein, will result in disqualification of proposal, delay of payments, or other sanctions deemed appropriate by the County, including those listed under Section (7), below.
7. When evaluating the performance of this Agreement, Milwaukee County reserves the right to conduct compliance reviews and request, both from the prime consultant/service provider and DBE sub-consultant(s), documentation that would indicate level of compliance. If the consultant/service provider is not in compliance with the specifications, the County will notify the consultant/service provider in writing of the corrective action that will bring the consultant/service provider into compliance. If the consultant/service provider fails or refuses to take corrective action as directed, Milwaukee County may take one or more of the actions listed below:
 - a. Terminate or cancel the Agreement, in whole or in part.
 - b. Remove the consultant/service provider from the list of qualified consultant/service providers and refuse to accept future proposals for a period not to exceed three (3) years.
 - c. Impose other appropriate sanctions, including withholding any retainage or other Agreement payments due which are sufficient to cover the unmet portion of the DBE goal, where the failure to meet the goal is the result of a finding by the CBDP Office of consultant/service

provider's bad faith.

- d. If the consultant/service provider has completed its Agreement, and the goal was not met due to an absence of good faith on the part of the consultant/service provider as determined under Section 4, above, the parties agree that the proper measure of damages for such non-compliance shall be the dollar amount of the unmet portion of the DBE goal. The county may in such case retain any unpaid Agreement amounts and retainage otherwise due the consultant/service provider, up to the amount of the unmet goal. If insufficient funds remain in the Agreement account to compensate the county up to that amount, Milwaukee County may bring suit to recover damages up to the amount of unmet goal, including interest at the rate of 12% annually, plus the County's costs, expenses and actual attorney's fees incurred in the collection action.
8. **DBE Participation Goal:** Each prime consultant/service provider shall utilize DBE firms to a minimum of **17%** of the purchases of product under the Agreement. DBE participation requirement relative to Agreement award shall be based upon the approved Milwaukee County Commitment to Subcontract to DBE Firms (DBD-014PS form). Consultants/service providers receiving additional work on the Agreement in the form of addendum, etc. shall be expected to increase DBE participation proportionally.
 9. Consultant/service providers should note that for the purpose of proposal evaluation, only DBEs certified at the time of proposal submission will be counted toward the goal. Consultants/Service Providers must submit a **Commitment to Subcontract to DBE Firms Form** or a **DBE Utilization Plan** in their proposal including, but not limited to, the following information (see form **DBD-014PS** for additional details):
 - a. Name(s) of DBE(s) firm(s) being considered for utilization.
 - b. Description of services that will be provided by the DBE(s).
 - c. Percentage of the work assigned to the DBE(s). Also, include dollar amount.
 10. Only DBEs that have been certified by Milwaukee County's Community Business Development Partners (CBDP), Certification Section, prior to the proposal due date may be listed on the "Commitment to Subcontract with DBE Firms" form and counted towards the DBE requirements on this project. In order to identify any certified DBE firms, and prevent any delay or disqualification of your proposal, refer to the Directory issued by **CBDP**. **The directory can be viewed at www.milwaukeecounty.org, do a search for "vendor", scroll down and double click on "Certified Vendor List" then click on the State of Wisconsin UCP Directory of Certified DBE Firms for the statewide listing, which includes Milwaukee County certified DBE firms.** If you need additional assistance related to certified DBE firms, contact the CBDP Office at (414) 278-4747.
 11. Prime consultant/service provider shall count towards the DBE requirement and be credited one hundred percent (100%) of expenditures to DBE firms, if all of the identified scope of work has a commercially useful function in the actual work of the Agreement and is performed directly by the listed certified DBE firm. The Director of the CBDP Office through the application of 49 CFR §26.55(c) will be responsible for the determination and evaluation of whether or not the firm is performing a commercially useful function on this project.
 12. Prime consultant/service provider is required to notify the CBDP office if their DBE subcontractors will further subcontract out work on this project. Credit will be given based on actual participation by DBE firms.

13. Listing a DBE on the Commitment to Subcontract to DBE Firms Form or Plan shall constitute a written representation and commitment that the prime consultant/service provider has communicated and negotiated directly with the DBE firm(s) listed, and that it will use the listed firm(s). If awarded the Agreement, the prime consultant/service provider will enter into a subcontract agreement with the DBE firm(s) listed on the Commitment to Subcontract to DBE Firms form for the work and price set forth thereon. This agreement must be submitted to the CBDP Office within seven (7) days from the Notice to Proceed.
14. Prime consultant/service provider must maintain DBE participation and performance logs. If the DBE firm(s) cannot perform, or if the prime consultant/service provider has a problem in meeting the DBE goal, or any other problem relative to the DBE goal requirement, the prime contractor shall immediately contact the CBDP Office at (414) 278-5248. If needed, prime contractor must submit a written request for substitution, including the reason for the request and the log. Approval must be obtained prior to making substitutions. Any difference in the cost occasioned by such substitution shall be borne by the prime contractor.
15. DBE Utilization Reports/Payment Applications After Agreement Award. DBE Utilization Reports (**DBD-016PS form**) must be submitted with the Payment Applications by the successful proposer after Agreement award. These reports must cover the period from the start of the project to the end of the period covered by the payment application being submitted or the period since the last payment application. The reports must be submitted even if no DBE activity took place during the period being reported. The County Project Manager will reject payment applications that are not in compliance with this section.
16. Final Payment Verification. The successful prime consultant/service provider must submit the "DBE Subcontractor Payment Certification" form (**DBD-018PS form**) and the final DBE Utilization Report along with their Final Payment Application. The County Project Manager will not process the Final Payment Application if these reports are not submitted.
17. County reserves the right to waive any of these specifications when it is in the best interest of the County and with the concurrence of the CBDP Office.

