

DRAFT AIA® Document C103™ – 2015

Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

and the Consultant:
(Name, legal status, address, and other information)

Consultant's discipline:

for the following Project:
(Name, location, and detailed description. Time limits for bringing claims in Section 6.1.1 are tied to completion of the "Project." The "Project" may be limited to the scope of services to be provided by the Consultant, or the Consultant may be providing services for a "Project" involving design and construction of one or more structures. Care should be taken in describing or defining the Project.)

The Owner and Consultant agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the TEXT of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document does not contain a description of the Consultant's scope of Services. This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:
(State below Initial Information, such as details of the Project's site and program; identity of the Architect, Owner's contractors and other consultants, and Consultants' subconsultants; anticipated procurement method; and other information relevant to the Consultant's Services.)

« As set forth in Attachment A – Request for Proposal (RFP) – »

§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Owner's anticipated design and construction schedule:

.1 Design phase milestones, if any:

« As set forth in Attachment A – Request for Proposal (RFP) – »

.2 Date for commencement of construction:

« As set forth in Attachment A – Request for Proposal (RFP) – »

.3 Substantial Completion date:

« As set forth in Attachment A – Request for Proposal (RFP) – »

.4 Other milestone dates:

« As set forth in Attachment A – Request for Proposal (RFP) – »

§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Consultant shall appropriately adjust the schedule, the Consultant's services, and the Consultant's compensation.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

(Describe the scope of the Consultant's services or identify an exhibit or scope of services document setting forth the Consultant's services and incorporated into this document in Section 11.2.)

« As set forth in Attachment A – Request for Proposal (RFP) and Attachment B – Consultant's Proposal »

§ 2.2 The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.

(List name, address, and other information.)

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§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other consultants. The Consultant may communicate with the Owner's other consultants for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner reasonably informed of the progress of the Consultant's services.

§ 2.7 **Insurance.** The Consultant shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost as set forth in Section 8.6.3.

§ 2.7.1 ~~Intentionally Deleted~~ Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for bodily injury and property damage.

§ 2.7.2 ~~Intentionally Deleted~~ Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.7.3 ~~Intentionally Deleted~~ The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

§ 2.7.4 ~~Intentionally Deleted~~ Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than « » (\$ « »).

~~§ 2.7.5 [Intentionally Deleted] Professional Liability covering the negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ~~« »~~ (\$ ~~« »~~) per claim and ~~« »~~ (\$ ~~« »~~) in the aggregate.~~

~~§ 2.7.6 [Intentionally Deleted] The Owner shall be an additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.~~

~~§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance and endorsements for review for each successive period of coverage for the duration of this Agreement evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies. The Consultant's required certification of insurance and endorsements is included as Attachment C.~~

~~§ 2.7.8 Insurance & Proof of Financial Responsibility for Claims. Purchase and maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims of tort as respect damage to persons or property and third parties in such coverage and amounts as required and approved by the County Risk Manager. Furnish acceptable proof of such coverage to the County Risk Manager prior to services commenced under this Agreement.~~

~~§ 2.7.9 Provide evidence of the following coverage and minimum amounts.~~

| <u>Type of Coverage</u> | <u>Minimum Limits</u> |
|---|---|
| <u>Wisconsin Workers Compensation</u> | <u>Statutory (Waiver if Subrogation for Worker Comp by Endorsement)</u> |
| <u>Employers Liability & Disease USL&H and All States Endorsement</u> | <u>\$100,000/\$500,000/\$100,000</u> |
| <u>General Liability</u> | <u>\$5,000,000 Per Occurrence (name the Owner as additional insured in the general liability policy by endorsement)</u> |
| <u>Bodily Injury & Property Damage to include personal injury, fire, legal, products and complete operations Contractual Liability and X, C & U</u> | <u>\$5,000,000 Aggregate</u> |
| <u>Architects & Engineers Professional Liability & Errors & Omissions (Refer to section 2.7.13 for additional conditions)</u> | <u>\$2,000,000 Per Occurrence</u> |
| <u>Environmental Impairment Insurance</u> | <u>\$1,000,000 Aggregate Minimum (Unless not required)</u> |
| <u>Automobile Liability</u> | <u>(Name the Owner as an Additional Insured in the automobile policy by endorsement)</u> |
| <u>Bodily Injury & Property Damage All Autos</u> | <u>\$1,000,000 Per Accident</u> |

Note: Consultants performing work on the secured air side at Milwaukee Mitchell International Airport and Timmerman Field shall maintain at least \$5,000,000 Auto & Commercial General Liability Limits. This can be satisfied through a combination of Auto and Umbrella, and General Liability and Umbrella Limits.

§ 2.7.10 Except for Environmental Impairment Insurance, Professional Liability (Errors and Omissions), Workers Compensation and Employers Liability, the Owner shall be an additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability to the fullest extent permitted by law, as their interests may appear as respects services provided in this Agreement, for claims caused in whole or in part by the Consultant's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. A Waiver of Subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Afford Owner Thirty (30) day written notice of cancellation or non-renewal.

§ 2.7.11 Place insurance specified above with at least an "A" rated carrier per Best's Rating Guide approved to do business in the State of Wisconsin. Submit deviations or waiver of required coverage or minimums in writing to Owner for approval as a condition of this Agreement. Waivers may be granted when surplus lines and specialty carriers are used.

§ 2.7.12 The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the Owner.

§ 2.7.13 Professional Liability – Additional Provisions

§ 2.7.13.1 Provide additional information on professional liability coverage as respects policy type, i.e., errors and omissions for consultants, architects, and/or engineers, etc.; applicable retention levels; coverage form, i.e. claims-made, occurrence; discovery clause conditions; and effective, retroactive, and expiration dates, to Owner as requested to obtain approval of coverage as respects this section.

§ 2.7.13.2 Be responsible for the accuracy of the services performed under this Agreement and promptly make necessary revisions or corrections to services resulting from negligent acts, errors or omissions without additional compensation.

§ 2.7.13.3 Give immediate attention to these revisions or corrections to prevent or minimize delay to Project schedule.

§ 2.7.13.4 Be responsible to the Owner for losses or costs to repair or remedy as a result of Consultant's negligent acts, errors or omissions.

§ 2.7.13.5 It is understood and agreed that coverage which applies to services inherent in this Agreement will be extended for two (2) years after completion of work contemplated in this Project if coverage is written on a claims-made basis.

§ 2.7.13.6 Deviations and waivers may be requested in writing based on market conditions to Owner. Approval shall be given in writing of any acceptable deviation or waiver to the Consultant prior to the Consultant effecting any change in conditions as contained in this section. Waivers shall not be unduly withheld nor denied without consultation with the Consultant.

§ 2.7.13.7 Obtain information on the professional liability coverage of subconsultants and/or subcontractors in the same form as specified above for review by Owner.

§ 2.8 Time. The Consultant shall provide its services within the time limits established in the Consultant's Schedule, or within the Deliverable(s) Time Limit(s) set forth below. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.
(Check one or both selections below.)

[] Consultant's Schedule: As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Owner's approval, a schedule for the performance of the Consultant's Services. If

relevant to the Consultant's Services, the schedule initially shall include anticipated dates for design phase milestones, commencement of construction, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

[« »] Deliverable(s) Time Limit: The Consultant shall provide the following deliverable(s) within the time limit(s) set forth below. Unless otherwise indicated below, time shall be calculated based on calendar days from the date of this Agreement.

| Deliverable(s) <i>(Describe the deliverable(s))</i> | Time Limits <i>(Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)</i> |
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ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement.

§ 3.2 The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Except for services due to (a) any negligent error or omission of the Consultant or Consultant's subconsultants; or (b) any breach of this Agreement by the Consultant the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2.

§ 3.3 If the services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Consultant, extension of the Consultant's services beyond that time shall be compensated as Additional Services.

§ 3.4 Notwithstanding anything to the contrary in this Agreement, Owner shall have no obligation to pay Consultant for any Additional Services unless, prior to performing same, (a) Consultant notifies Owner in writing of the services it intends to perform, the reasons therefor and the cost of such services, and (b) Owner agrees in writing to such services and the cost therefor. If Consultant fails to comply with the foregoing procedure, such services shall be deemed to be Basic Services under this Agreement. In addition, Owner shall have no obligation to pay Consultant for any Additional Services if such services result from the errors, omissions or negligence of Consultant or the failure of Consultant to perform in accordance with the terms of this Agreement. Consultant acknowledges that Basic Services shall include all of Consultant's services performed in connection with the Project prior to the date hereof and that none of such services shall be considered Additional Services.

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ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. Within 15 days after receipt of a written request from the Consultant, the Owner shall furnish the requested information as necessary and relevant for the Consultant to evaluate, give notice of, or enforce lien rights.

§ 4.2 The Owner identifies the following representative who is authorized to act on the Owner's behalf with respect to the Project.
(List name, address, and other information.)

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§ 4.3 The Owner shall render decisions and approve the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

§ 4.4 The Owner shall coordinate the services of its other consultants with those services provided by the Consultant. The Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. ~~The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants.~~ The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.

§ 4.5 The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required for the Consultant to be able to perform its services.

§ 4.6 The Owner shall provide prompt written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services.

ARTICLE 5 COPYRIGHTS AND LICENSES

§ 5.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and the Consultant's subconsultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials in digital or physical form.

§ 5.2 ~~The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.~~ If the Owner and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions or comply with protocols established for the Project, if any.

§ 5.3 ~~[Intentionally Deleted] The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant's subconsultants.~~

§ 5.4 ~~[Intentionally Deleted] Upon execution of this Agreement, the Consultant grants to the Owner a nonexclusive license to use the Consultant's Instruments of Service solely and exclusively for purposes of designing, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Consultant shall obtain similar nonexclusive licenses from its subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Owner's consultants and contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for the purposes of designing, constructing, using, maintaining, altering and adding to the Project. If the Consultant rightfully terminates this Agreement for cause as provided in Section 7.4, the license granted in this Section 5.4 shall terminate.~~

§ 5.4.1 ~~[Intentionally Deleted] In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Consultant and the Consultant's subconsultants from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Consultant and its subconsultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from~~

the Owner's use of the Instruments of Service under this Section 5.4.1. The terms of this Section 5.4.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 7.4.

§ 5.5 ~~[Intentionally Deleted]~~ Except for the licenses granted in this Article 5, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and the Consultant's subconsultants.

§ 5.6 Upon completion of the Project or upon termination of this Agreement, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Consultant has collected or prepared in carrying out this Agreement shall be provided to and become the exclusive property of the Owner. Therefore, any reports, information and data, given to or prepared or assembled by Consultant under this Agreement shall not be made available to any individual or organization by Consultant without the prior written approval of the Owner (see **Attachment I – Record Documents**). 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 Consultant.

§ 5.7 Consultant further understands that oral and written communications with Owner regarding Consultant's services under this Agreement are confidential. No aspect of Consultant's services may be discussed with any individual or organization other than Owner, unless Consultant receives prior written authorization from Owner for such discussion.

§ 5.8 If Consultant's services are terminated prior to completion of the Project, Owner will indemnify and hold Consultant and Consultant's subconsultants harmless for costs or claims for damages arising out of use the of incomplete documents, interpretation, revision, alteration, or omission to the documents which are not made by Consultant or subconsultants. Should Owner reuse documents, created by Consultant, the seals and certifications of Consultant and subconsultants shall be invalid, shall not be used and shall be deleted and Owner will indemnify and hold Consultant and Consultant's subconsultants harmless for cost or claims for damages arising out of the reuse of the documents.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date the Project is sufficiently complete so that the Owner can utilize it for its intended use. The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.

§ 6.1.2 To the extent damages are ~~covered by~~ recovered under property insurance, the Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Consultant, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 6.1.3 ~~[Intentionally Deleted]~~ The Consultant and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 7.7.

§ 6.1.4 The Consultant shall indemnify, defend and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Consultant, its employees and its consultants in the performance of professional services under this Agreement.

§ 6.2 Mediation

§ 6.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 6.2.2 The Owner and Consultant shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 6.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. *If the Owner and Consultant do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.*)

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

Litigation or Arbitration as determined by Owner, acting in its sole and absolute discretion, after the dispute arises.

§ 6.3 Arbitration

§ 6.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question, arising out of or related to this Agreement, subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 6.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.

§ 6.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 6.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 6.3.4 Consolidation or Joinder [Intentionally Deleted]~~

~~§ 6.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 6.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 6.3.4.3 The Owner and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.~~

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 If the Owner fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 7.2 If the Owner suspends the Project or the Consultant's services, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project or the Consultant's services are resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 7.3 If the Owner suspends the Project or the Consultant's services for more than 90 cumulative days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

§ 7.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 7.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Consultant for the Owner's convenience and without cause.

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 7.7.

~~§ 7.7 [Intentionally Deleted] Termination Expenses are in addition to compensation for the Consultant's services and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant.~~

§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 5 and Section 8.7.

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows:
(Insert amount of, or basis for, compensation)

« The Compensation Total including reimbursables expenses for the project for the Consultant including all subconsultants shall be the “Not-To-Exceed” sum as indicated below on the basis of hourly rates set forth in section 8.3 »

(Insert amount)

« »

§ 8.2 The Owner shall compensate the Consultant for approved Additional Services that may arise during the course of the Project as follows:

(Insert amount of, or basis for, compensation.)

« Hourly, Not-to-Exceed rates as set forth in Attachment E - Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule as updated from time to time by the Consultant and approved by the Owner »

Additional Services Rate Itemization

The form on which the Additional Services Rate Itemization is reported and approved is included as Attachment E (by Consultant and subconsultants).

»

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant’s subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant’s and Consultant’s subconsultants’ normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« As set forth in Attachment E - Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule as updated from time to time by the Consultant and approved by the Owner »

On Attachment E list staff by name, including clerical staff, who will be assigned to the Project.

“Overhead Rate” (Overhead Factor less profit) contained within the Overhead Factor submitted by Consultant and each subconsultant shall be Federal Acquisition Regulation (“FAR”) (48 CFR 1-31) audit certified. Provide a copy of the most recent auditor’s report for each rate.

If Consultant or subconsultant does not possess a FAR audit certified rate then each shall submit as Attachment E-2 their proposed rate, for the fiscal year, with identification of the accounting method used and certification that the proposed rate contains only those indirect costs proper and appropriate for the type of professional services sought by this Agreement. It is understood and agreed that no direct charge will be made for labor or expenses included in the Overhead Factor.

“Overhead Factor” and the “Principal’s Flat Rate” shall include but are not limited to reimbursement of the following:

| | |
|---|--|
| <u>Social Security</u> | <u>General Office Expenses</u> |
| <u>Vacation, Holiday & Sick Pay</u> | <u>Dues & Subscriptions</u> |
| <u>Pension & Personal Insurance Plans</u> | <u>Profit</u> |
| <u>Local Telephone & Fax Service</u> | <u>Registration Fees</u> |
| <u>Insurance</u> | <u>Legal & Accounting Expenses</u> |
| <u>Postage & Shipping</u> | <u>Auto Expenses, Parking</u> |
| <u>Taxes</u> | <u>Travel Costs to locations within a 100 mile radius of Milwaukee</u> |
| <u>Office & Drafting Supplies</u> | <u>Meals</u> |
| <u>Repairs & Maintenance</u> | <u>Use of CAD Equipment & Systems (including drawing plots)</u> |
| <u>Selling Expense</u> | <u>Miscellaneous Overhead</u> |
| <u>General Advertising</u> | <u>Office Utilities</u> |

For personnel changes during the term of this Agreement submit a new **Attachment E-1** within sixty (60) days of adding or deleting staff used or permanent classification changes. In case of added personnel or classification changes, the new "Direct Salary Rate/Hour" will not increase more than 10 percent (10%) above the rate previously listed for the specific classification being replaced.

->

Employee or Category

Rate

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed as set forth in Attachment G – Required Invoice Format. Payments are due and payable ~~upon~~ within thirty (30) days following presentation of the Consultant's invoice which shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to the Agreement or any other supporting documentation requested by Owner. Except for documentation specifically required by Attachment G – Required Invoice Format, all other supporting documentation shall not be submitted but shall be clearly identified and readily accessible as specified herein under section 9.11. Amounts unpaid ~~«<thirty»~~ (~~«<30»~~) days after the invoice is received by the Owner with the required supporting documentation date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant. (Insert rate of monthly or annual interest agreed upon.)

« Payment due and unpaid under Contract Documents shall bear interest at rate specified in Wisconsin Statutes 71.82 (1) (a) compounded monthly » percent (~~»~~ %)»

§ 8.4.1 Owner will make payments to Consultant within thirty (30) days of invoice approval on the basis of monthly billings prepared by the Consultant and approved by the Owner. Payments will be made on the basis of ninety five percent (95%) of the approved statement. No retainage, however, shall be withheld for reimbursable expenses.

§ 8.4.2. Adherence with prompt payment requirements is monitored through information entered into the Diversity Management and Compliance System, utilizing B2GNow software. Consultant is required to report payments received from the Owner and amounts paid to subconsultants. Subconsultants will receive an automated email requesting them to confirm the amounts and whether the terms of the prompt payment policy were complied with. There is no cost to the Consultant or any subconsultant, the only requirement is to become a registered user and complete the one hour webinar training. The Owner will enter the Consultant's contract, and the Consultant will enter all subconsultants, including both TBE/DBE and non-TBE/DBE firms.

§ 8.5 [Intentionally Deleted] The Owner shall not withhold amounts from the Consultant's compensation to impose a penalty or liquidated damages on the Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project as set forth in Attachment F – Guidelines for Reimbursable Expenses and shall not exceed the amount established in Attachment B – Consultant's Proposal, as follows:

- ~~.1 Transportation and authorized out-of-town travel and subsistence;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
- ~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~
- ~~.4 Printing, reproductions, plots, standard form documents;~~
- ~~.5 Postage, handling and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 Consultant's subconsultants expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Consultant's subconsultants;~~
- ~~.8 All taxes levied on professional services and on reimbursable expenses;~~

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User Notes:

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~~.9 Other similar Project-related expenditures, if authorized in advance by the Owner.~~

~~§ 8.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Consultant plus an administrative fee of ~~«zero»~~ percent (~~«0»~~ %) of the expenses incurred as set forth Attachment F – Guidelines for Reimbursable Expenses.~~

~~§ 8.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Consultant normally maintains and the Consultant incurred or will incur additional costs to satisfy such requirements, the Owner shall reimburse the Consultant for such costs as set forth below:~~

~~« As set forth in Attachment F – Guidelines for Reimbursable Expenses –»~~

~~§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be provided as set forth in Attachment G – Required Invoice Format available to the Owner at mutually convenient times.~~

~~§ 8.7 Compensation for Use of Consultant's Instruments of Service [Intentionally Deleted]~~

~~If the Owner terminates the Consultant for its convenience under Section 7.5, or the Consultant terminates this Agreement under Section 7.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

~~«→»~~

§ 8.8 Final Payment

§ 8.8.1 Final Payment shall be made after the following have been accomplished:

- .1 Owner is in receipt of "Record Documents".
- .2 Owner is in receipt of Consultant's invoice labeled "Final Billing".
- .3 Owner has determined that Consultant has performed the obligations under this Agreement as evidenced by completion of Attachment L – Consultant Agreement Closeout Checklist.

§ 8.8.2 Final payment shall be the release of the five percent (5%) retainage, held by Owner from partial payments for performance under this Agreement.

§ 8.8.3 Consultant is required to conform to all TBE/DBE Requirements set forth in Attachment D. Upon notification from Owner to the Consultant that the obligations under this Agreement have been completed, the Consultant shall within thirty (30) calendar days submit for payment a final invoice for any remaining unpaid charges. Should the Consultant fail to respond within the thirty (30) days, the Owner will assume no additional charges have been incurred. Owner will transmit to Consultant notice of termination of this Agreement with a check for any remaining retainage.

§ 8.8.4 Consultant shall submit to Owner a partial waiver of lien (covering all services through the date of payment) from Consultant and all of its consultants as a condition to receiving each progress payment and a final waiver of lien from Consultant and all of its consultants as a condition to receiving final payment.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 6.3.

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project ~~if the lender agrees to assume the Owner's rights and obligations under this Agreement.~~

§ 9.3 If the Owner requests the Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Consultant for review at least 14 days prior to the requested dates of execution. If the Owner requests the Consultant to execute consents reasonably required to facilitate assignment to a lender, the Consultant shall

execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Consultant for review at least 14 days prior to execution. The Consultant shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 9.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

§ 9.5 Unless otherwise required in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 9.6 Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information or (4) as may be required under Wisconsin's Public Records Law, Wis. Stat. § 19.21 *et seq.*, as determined by Owner in accordance therewith, as set forth in Section 9.6.1.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

§ 9.6.2 Consultant and Owner understand that Owner is bound by the Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21 *et seq.* Consultant hereby agrees that it shall be obligated to assist Owner in retaining and timely producing records that are subject to Public Records Law upon any statutory request having been made. Except as otherwise authorized by Owner in writing, records that are subject to Public Records Law shall be maintained for a period of three years after expiration of this Agreement. In the event that Owner receives a request to disclose any Consultant information defined as "Confidential Information" or labeled as such by Consultant, Owner will promptly provide Consultant notice of the public records request to enable Consultant to resist any required disclosure and/or to obtain suitable protection regarding such required disclosure by Owner. In the event the designation of "Confidential Information" of such Consultant information is challenged by the requestor and Consultant resists disclosure by Owner, Consultant hereby agrees to provide legal counsel or other necessary assistance to Owner to defend the designation of confidentiality and agrees to indemnify and hold Owner harmless for any costs or damages arising out of Owner's agreement to withhold such Consultant information from disclosure. Alternatively—or in the event Owner declines to resist a request to disclose any such document—Consultant may instead exercise itself any right available to it under the law to attempt to prevent disclosure by Owner.

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§ 9.7 Counterparts, Facsimile or Electronic Signature. This Agreement may be signed in one or more counterparts including via facsimile or email, or by electronic signature in accordance with applicable law, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that both parties are not signatories to the same counterpart. A signed facsimile or photocopy of this Agreement shall be binding on the parties to this Agreement.

§ 9.8 Equal Employment Opportunity. In accordance with Section 56.17 of the Milwaukee County Code of General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, Consultant certifies as to the following:

§ 9.8.1 Non-Discrimination

1 The Consultant shall not discriminate against an employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender

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expression, or disability, marital status, family status, lawful source of income or status as a victim of domestic abuse, sexual assault or stalking, which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- .2 The Consultant shall post in conspicuous places, available to employees, notices to be provided by the County, setting forth provisions of non-discrimination clause.
- .3 A violation of this Section 10.11 shall be sufficient cause for Owner to terminate this Agreement without liability for uncompleted portion or for materials or services purchased or paid for by Consultant for use in completing this Agreement.

§ 9.8.2 Affirmative Action Program

- .1 Consultant shall strive to implement principles of equal employment opportunity through an effective affirmative action program, which shall have as its objective to increase the use of women, minorities, and persons with disabilities and other protected groups, at all levels of employment in all divisions of Consultant's work force, where these groups may have been previously under-used and under-represented.
- .2 In the event of dispute of compliance with these requirements, Consultant shall be responsible for showing that the requirements have been met.

§ 9.8.3 Affirmative Action Plan

- .1 Consultant shall certify that if it has fifty (50) or more employees, a written affirmative action plan has been filed or will be developed and submitted (within 120 days of contract award) for each establishment. File current Affirmative Action plans, if required, with one of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, 633 W. Wisconsin Avenue, 9th Floor, Milwaukee, Wisconsin 53203. If a current plan has been filed, indicate where filed « » and the year covered « ».
- .2 The Consultant shall require lower-tier subcontractors who have fifty (50) or more employees to establish similar written affirmative action plans.

§ 9.8.4 Non-Segregated Facilities. Consultant shall certify that it does not and will not maintain or provide segregated facilities for employees at its establishments, and that employees are not permitted to perform their services at a location under its control where segregated facilities are maintained.

§ 9.8.5 Consultant. Consultant shall certify that certifications regarding non-discrimination, affirmative action program, and non-segregated facilities have been obtained from proposed consultants that are directly related to contracts with the Owner, if any, prior to the award of contracts, and that such certification will be retained.

§ 9.8.6 Reporting Requirement. Where applicable, Consultant shall certify compliance with reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60 (Equal Opportunity Employment).

§ 9.8.7 Employees. Consultant shall certify that « » employees are in the Standard Metropolitan Statistical Area (Counties of Milwaukee, Waukesha, Ozaukee, and Washington, Wisconsin) and that it has « » employees in total.

§ 9.8.8 Compliance. Consultant shall certify that it is not currently in receipt of outstanding letters of deficiencies, show cause, probable cause, or other notification of non-compliance with EEO regulations.

§ 9.9 Consultant Services. Should Consultant find it necessary or advisable to employ consultants for performing services under this Agreement, the following shall apply:

§ 9.9.1 Consultant shall:

- .1 Be responsible for services performed by any consultants under this Agreement.
- .2 Be compensated for the cost of any consultants as provided under Payments (consultant compensation is included in the overall basic compensation total).

§ 9.9.2 Consultants employed shall be engaged in conformance with the following:

- .1 Obtain Owner's written approval for the hiring of each proposed consultant to be used in performance of the contractual obligations under this Agreement. Owner' will indicate such approval and/or rejection on Attachment J – Subconsultant Listing.
- .2 Within five (5) days of the above approval, consultant shall execute Attachment K – Subconsultant Compliance Certification, binding consultant to the terms and conditions of this Agreement including the Audit and Inspection of Records requirements.
- .3 Owner will not approve as a consultant a person connected with a firm manufacturing, selling, or installing material or equipment that is or may be included in Project.
- .4 Approved consultants shall also complete Attachment E – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule for potential additional services to be requested at a later date.

§ 9.9.3 Unless otherwise approved by Owner, Consultant shall not employ consultants within the Consultant's specialties, i.e. architectural design for architects, electrical for electrical engineers, HVAC for HVAC engineers, etc.

§ 9.9.4 Fees for consultants shall be compensated by Owner as billed to Consultant (there shall be no mark up for costs/fees billed by consultants).

§ 9.10 Compliance with Governmental Requirements. Evidence satisfactory compliance for Unemployment Compensation and Social Security Reporting as required by federal and state laws.

§ 9.11 Rights of access and audit. The Consultant, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Consultant related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Consultant. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Consultant and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.

§ 9.12 Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between Owner or its successors or assigns and Consultant or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Consultant is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

§ 9.13 Prohibited Practices

- .1 Consultant during the period of this Agreement shall not hire, retain or utilize for compensation any member, officer, or employee of Milwaukee County or any person who, to the knowledge of Consultant, has a conflict of interest with Milwaukee County.
- .2 Consultant hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

§ 9.14 The Owner shall agree that the Consultant will not provide environmental reports or evaluations of existing conditions at the existing building with regards to hazardous materials and other environmental conditions that may or may not be prevalent at the existing building site including but not limited to the presence of asbestos, mold, hazardous waste or any and all other materials or conditions that may pose threat or danger to the owner and or his contractor, subcontractor employees and customers, residents, tenants, lender, or other.

§ 9.15 It is intended by the parties to this Agreement that the services provided in connection with the Project shall not subject the individual employees, officers, directors, owners, consultants to any personal legal exposure for the risks associated with this Project. Therefore, and not withstanding anything to the contrary contained herein, the Owner and

Consultant agrees that, any claim, demand or suit shall be directed and or asserted only against the company and not against any of the company's individual employees, officers, directors, owners, and consultants.

§ 9.16 Notice. All notices or other communications required or permitted to be given or made hereunder to either party shall be deemed to be so given or made when in writing via email, with a delivery confirmation, or delivered in person (with evidence of receipt) such as overnight courier services or sent by United States Registered or Certified Mail, Postage prepaid, or by Federal Express or other service providing proof of delivery, directed to the parties at the following addresses or to such other addresses as they may from time to time designate in writing:

If to the Owner:

<>
<>
<>

And

<>
<>
<>

If to Consultant:

<>
<>
<>

Any change to the notice address listed above must be given to the other party in the same manner as described in this section. The date of notice shall be the date of delivery if the notice is personally delivered, the date of mailing if the notice is sent by United States certified mail or the date of transmission if the notice is sent by email. Each party agrees to maintain evidence of the respective notice method utilized.

§ 9.17 Medicare Access to Books and Records. In the event, and only in the event, that Section 952 of P.L. 96-499 (42 U.S.C. Section 1395x(v)(1)) is applicable to this Agreement, the Consultant agrees as follows: (a) until the expiration of four (4) years after the furnishing of such services pursuant to this Agreement, the Consultant shall make available, upon written request of the Secretary of the U.S. Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of his/her duly authorized representatives, this Agreement, and books, documents and records of the Consultant that are necessary to certify the nature of the duties of this Agreement; and (b) if Consultant performs its services hereunder through a subcontract with a related organization, with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, then any such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary of the U.S. Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of its duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of the cost of services provided pursuant to such subcontract.

§ 9.18 Milwaukee County Contractor Code of Conduct

§ 9.18.1 The Contractor shall comply with the Milwaukee County Contractor Code of Conduct. A failure to adhere to these requirements may result in contract termination, penalties, or other remedial actions as deemed necessary by Milwaukee County.

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ARTICLE 10 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

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ARTICLE 11 SCOPE OF THE AGREEMENT

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. In the event of a conflict between the terms and conditions of this C103™-2015, Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103-2015, Standard Form Agreement between Owner and Consultant shall take precedence.

§ 11.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C103™-2015, Standard Form of Agreement Between Owner and Consultant.
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

« »

- .3 Scope of Services Exhibit(s) listed in section 2.1
- .4 Other documents:
(List other documents hereby incorporated into the Agreement.)

- « Attachment A – Request for Proposal »
- « Attachment B – Consultant’s Proposal »
- « Attachment C – Certificate of Insurance and Endorsements »
- « Attachment D – Targeted Business Enterprise (TBE) Requirements »
- « Attachment E – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule »
- « Attachment F – Guidelines for Reimbursable Expenses »
- « Attachment G – Required Invoice Format »
- « Attachment H – NOT USED »
- « Attachment I – NOT USED Record Documents »
- « Attachment J – Subconsultant Listing Subconsultant Listing NOT USED »
- « Attachment K – Subconsultant Compliance Certification Subconsultant Compliance Certificate NOT USED »
- « Attachment L – Consultant Agreement Closeout Checklist »
- « Attachment M – AIA Document C201 – 2015 Consultant – Land Surveying Modified AIA A201 – 2017 General Conditions »

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This Agreement entered into as of the day and year first written above.

OWNER (Signature)

 « »

 (Printed name and title)

CONSULTANT (Signature)

 « »

 (Printed name and title)