

Pre-Design Services – Attachment A

Section 1 - Indemnification and Hold Harmless Clause

_____ (Contractor / Vendor Name) agrees at all times during the term of the agreement to indemnify, hold harmless and defend the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers against any and all liabilities, losses, damages costs or expenses (including, without limitation, actual attorney's and consultant's fees) which the County, its Boards, Committees, Officers, Employees and Representatives may sustain, incur or be required to pay by reason of or in any way related to bodily injury, personal injury or property damage of whatsoever nature or in connection with or in any way related to the performance of the work by _____ (Contractor/Vendor Name), its employees, agents and anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, provided, however, that the provisions of this section shall not apply to liabilities, losses, charges, costs or expenses caused solely by or resulting from the gross negligent acts or omissions of the County, its Agencies, Boards, Committees, Officers, Employees, Authorized Representatives or Volunteers. It is agreed that Contractor/Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Contractor's/Vendor's indemnity obligations shall not be limited by any worker's compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by or required of Contractor/Vendor. Nothing contained in this agreement is intended to be a waiver or estoppels of the County to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, neither the municipality nor its insurer shall not be liable in indemnity and contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

Section 2 - Compliance with Laws, Regulations, Permits, Etc. Clause

The _____ (Contractor/Vendor Name) shall comply with all Federal, State and local codes, laws, regulations, standards, and ordinances, including, without limitation, those of the Occupational Safety and Health Administration (OSHA), the Wisconsin Department of Safety and Professional Services and all County rules and orders governing the performance of the work performed by the Contractor/Vendor, its employees, agents and subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. In addition, any material, equipment or supplies provided to the County must comply with all safety requirements as set forth by the Wisconsin Administrative Code, Rules of the Industrial Commission on Safety and all applicable OSHA Standards. Effective May 1, 2007 employers performing work on qualified public works construction projects in Wisconsin for municipal government and state building projects will be required to have a written substance abuse testing program in place. The provisions of this requirement are contained in Wisconsin Statute § 103.503.

Section 3 - Subcontractors Clause

The _____ (Contractor/Vendor Name) shall require each of their Subcontractors to take out and maintain, during the life of their subcontract the same insurance coverages as required under section 6, below, including without limitation naming the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers as additional insureds with respect to all commercial general liability insurance policies. Each Subcontractor shall furnish to the _____ (Contractor/Vendor Name) two (2) copies of all certificates of insurance in a form acceptable to the County. The _____ (Contractor/Vendor Name) shall furnish one copy of

each of the certificates of insurance, and any other evidence of insurance requested by the County, to the County prior to the commencement of any work to be performed by Contractor/Vendor or its Subcontractors. The County reserves the right to immediately terminate the contract with no liability or obligation to Contractor/Vendor or its Subcontractors, if the Subcontractor is not in compliance with these insurance requirements.

Section 4 - Proof of Insurance

Policies shall be issued by a company or companies authorized to do business in the State of Wisconsin and licensed by the Wisconsin Insurance Department and having an "AM Best" rating of A- or better. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of the Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. Coverage afforded shall apply as primary and non-contributory, with the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers named as **additionally insureds (with respects to any and all insurance policies identified in Section 6, as allowed by law)**. All liability insurance policies (except professional liability policies) to be maintained hereunder by Contractor/Vendor shall be occurrence based and not claims made policies. The County shall be given thirty (30) days advance notice of cancellation or nonrenewal of any and all required insurance coverages during the term of this agreement. Prior to the execution of this agreement, the _____ (Contractor/Vendor name) shall furnish the County with certificates of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative and, upon request, certified copies of the required insurance policies and any other insurance related information, evidencing the insurance coverage requirements referenced below. **Certificates of insurance shall be sent to the following address: Outagamie County, Attention: Risk Administrator, 320 South Walnut Street, Appleton, WI 54911.** The County reserves the right to immediately terminate the contract with no liability or obligation to Contractor/Vendor or any of its Subcontractors, if the _____ (Contractor/Vendor Name) is not in compliance with these insurance requirements.

Section 5 – Applicable Law

Any lawsuits related to or arising out of disputes under this agreement shall be commenced and tried in the Circuit Court of Outagamie County, Wisconsin and the County and _____ (Contractor/Vendor Name) shall submit exclusively and specifically to the jurisdiction of the Outagamie County Circuit Court for such lawsuits. This agreement will be governed and construed according to the laws of the State of Wisconsin.

Section 6 – Insurance Coverage Requirements:

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. **Outagamie County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor/Vendor from liabilities that might arise out of the performance of work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.**

(Contractor/Vendor Name) agrees that in order to protect itself and the County, its Boards, Committees, Employees, Authorized Representatives and Volunteers under the indemnity provisions of Section 1, it will at all times during the term of the agreement provide and maintain at its own expense, the following minimum limits of insurance covering its operations:

Minimum Insurance Coverages and Limits

1) Worker's Compensation & Employer's Liability

- a) Applicable State – Statutory Limits as Required by the State of Wisconsin
- b) Applicable Federal (e.g. U.S. Longshoremen's and Harbor Worker's Act, Admiralty (Jones) Act, and Federal Employer's Liability Act) – Statutory Limit
- c) Employer's Liability - \$100,000 each occurrence / \$100,000 each person (disease) / \$500,000 total limit (disease)

Except as may be otherwise set forth herein, the County shall not be liable to _____ (Contractor/Vendor Name), its employees, or subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, for any injuries to any of them arising out of or in any way related to the performance of the work under this agreement.

_____ (Contractor/Vendor Name) agrees that the indemnification and hold harmless provisions within this agreement extend to any claims brought by or on behalf of any such employees, subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

2) Automobile Liability – Owned, Non-Owned, Hired

- a) Bodily Injury and Property Damage Combined - \$1,000,000 for bodily injury and property damage per occurrence limit covering all vehicles to be used in connection with the performance of Contractor's/Vendor's obligations under this Agreement.
- b) Coverage for commercial automobile liability insurance shall be at least as broad as Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

If Contractor/Vendor/Subcontractor or Contractor's/ Vendor's/Subcontractor's employees use personal vehicles to perform any services or work to be performed by Contractor/Vendor or Subcontractor under this Agreement, the Contractor/Vendor/Subcontractor must provide, to the County, a copy of the Certificate of Insurance (and any other documentation requested by the County) for Personal Automobile Liability coverage for each employee of Contractor/Vendor/Subcontractor who will be using their personal vehicle to perform such services or work as evidence of satisfactory compliance.

3) Commercial General Liability (Including Broad Liability Endorsement)

- a) Bodily Injury and Property Damage Combined - \$1,000,000, Each Occurrence
- b) Personal Injury - \$1,000,000
- c) Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)

4) Umbrella or Excess Liability

- a) \$1,000,000 following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages.

5) Professional Liability

- a) \$1,000,000 following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages.

The _____ (Contractor /Vendor Name) shall maintain insurance covering negligent acts, errors and omissions, arising out of performance of, or the failure to perform, any professional services required under this Agreement. Additionally, the _____ (Contractor/Vendor Name) shall require its consultants and their sub-consultants, if any, to maintain professional liability insurance. If the policy coverage is a claims made policy and not occurrence based, then all such insurance coverages shall be maintained for a minimum of ten (10) years following completion or earlier termination of the Project.