

**SAUK COUNTY  
WISCONSIN  
CONTRACT DOCUMENTS  
FOR  
CTH PF Seal Coat Project**

Bid Opening Date, Time & Location: April 12, 2023, 10:00 a.m. Sauk County  
Highway Department 620 Linn St Baraboo, WI 53913

**SAUK COUNTY  
HIGHWAY DEPARTMENT  
PO BOX 26  
620 Linn St  
Baraboo, WI 53913  
608-355-4855**

***\*\*NOTE: Contractors submitting bids must perform at least 50% of the  
work outlined in the bid documents.\*\*\****

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**SECTION 0020**

**INVITATION TO BID**

Sealed bids for furnishing the following ITEM will be received at the Sauk County Highway Office, which is located at the following address: 620 Linn St, Baraboo, WI 53913 (by hand delivery) or P.O. Box 26 (United States Postal Service Delivery) until the time specified below at which time the bids will be publicly opened and read:

ITEM

BID OPENING

**Bid: CTH PF Seal Coat Project**

**April 12, 2023, 10am**

In general, this request for bids is for services and equipment involved for complete installation of Seal Coat and Traffic Control as outlined in the documents listed in the table of contents.

It is required that the work to be done under this contract shall be completed by October 31, 2023 but a contract extension shall be at the discretion of the Highway Commissioner. Time is of the essence regarding the completion deadline, and all other deadlines specified herein. Unless a written extension is granted, all work shall be completed by the end of October 2023.

Specifications and bid forms may be obtained at the Highway office, the address of which is 620 Linn St Baraboo, WI 53913 Monday through Friday between 7:00 a.m. – 3:00 p.m. or by emailing a request to [Patrick.gavinski@saukcountywi.gov](mailto:Patrick.gavinski@saukcountywi.gov) starting March 15, 2023.

Contract documents may be reviewed at the Highway Office, the address of which is 620 Linn St Baraboo, WI 53913 Monday through Friday from 7:00 a.m. until 3:00 p.m.

Bids will be opened in the Highway Office, the address of which is 620 Linn St, Baraboo, WI 53913 on **April 12, 2023 at 10:00am**. Each Bid must be accompanied by a bid security consisting of a BID BOND, CASH, or, CERTIFIED CHECK issued by a responsible bank or trust company in the amount of 10% of the bid price.

The bid will be awarded at a meeting of the Highway Committee on April 12, 2023 at 5:00pm or as soon as the matter may be heard.

*This is an LRIP project using CHIP funds, all bids for this project are subject to applicable public bidding laws of Wisconsin.*

**There will be no pre-bid meeting for this project.**

The successful bidder must furnish a 100% Performance Bond and a 100% Payment Bond in the contract sum with a corporate surety approved by the Owner (Sauk County).

Selection of the contractor will be based upon bidder qualifications, including but not limited to evidence of past performance in similar projects, and bid price. The contract will be awarded to

the bidder deemed by the awarding authority to be the lowest properly responsive, responsible and eligible bidder.

**Contractors submitting bids must perform at least 50% of the work outlined in the bid documents.**

The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

Sauk County reserves the right to waive any informalities, to accept or reject, in whole or in part any or all bids, or take whatever other action may be deemed to be in the best interest of the County.

Sauk County, by:

Name: Patrick Gavinski  
Title: Highway Commissioner

**SECTION 00100**

## **INSTRUCTIONS TO BIDDERS**

### 1. Receipt and Opening of Bids

Sauk County, Wisconsin herein called the County, acting by and through its Highway Commissioner, will receive sealed Bids for the project known as:

#### **CTH PF Seal Coat Project**

General bids shall be addressed to the Sauk County Highway office, the address of which is 620 Linn St. Baraboo, WI 53913 and endorsed "**CTH PF Seal Coat Project**" Three copies of the bid submission shall be included in the aforementioned sealed envelope. Bids will be received at the Sauk County Highway Office until 10:00 a.m. Central time, on April 12, 2023, at which time and place said bids will be publicly opened and read aloud.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

### 2. Location and Work to be Done

The Work consists of services and equipment involved in the installation of Seal Coat and Traffic Control as outlined in the documents listed in the table of contents, as directed by the Sauk County Highway Commissioner or his/her designee.

The location shall be CTH PF from CTH W (East) to USH 12, general characteristics, and principal details of the Work to be performed are specified in the contract specifications entitled: CTH PF Seal Coat Project

Additional drawings showing details in accordance with which the Work is to be done may be furnished by addendum from time to time during the bidding period by the County or its Consultant, if any, and shall then become a part of the Contract Documents.

Under Section 77.54 (9m) the Wisconsin Statutes, The sales price from the sale of and the storage, use, or other consumption of tangible personal property, or items or property under s. 77.52(1)(b) or (c), sold to a construction contractor that, in fulfillment of a real property construction activity, transfers the tangible personal property, or items or property under s. 77.52(1)(b) or (c), to County if such tangible personal property, or items or property, becomes a component of a facility in this state that is owned by the County, are not subject to sales tax. "Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and wastewater treatment facility, but does not include a highway, street, or road. Contractor and all subcontractors shall avail themselves of this exemption to the full extent allowed by law, and shall comply with all related legal requirements, including but not limited to record keeping requirements.

The Contractor shall furnish all mobilization, labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

All quantities are approximate and do not expressly, or by implication warrant that the actual quantities will correspond therewith, but the County reserves the right to reasonably increase or decrease the quantity. An increase or decrease in the quantity for any item shall not be regarded as cause for an increase or decrease in the unit prices.

It is encouraged that bidders visit the site prior to submitting a bid. All site visits shall be conducted on or before Bidding Date. Bidders may contact the Owner at the following address and phone number in order to arrange date and time to visit project site:

Highway Department  
Patrick Gavinski  
620 Linn St  
Baraboo, WI 53913  
Telephone number: 608-355-4380

### 3. Preparation of Bid

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures.

Failure to complete the bid document adequately including the “Non-Collusion Affidavit” and the “Certificate of Vote” may result in the disqualification of the bidder.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

All bids, attachments to bids, and other items supplied to County, including but not limited to blueprints, drawings, or project descriptions, by all bidders, successful or otherwise, shall be the property of County. County shall not owe to any bidder, successful or otherwise, any obligation of confidentiality with regard to any bid, attachment to bid, other items supplied to County by bidder, including but not limited to blueprints, drawings, or project descriptions, or any contract document resulting from bid. Contract documents shall be the property of both parties.

County shall not be liable to any bidder for any costs incurred in bidding or communicating with County concerning bidding.

Unless otherwise made clearly inapplicable by County in this document, all bid prices shall include the cost of mobilization of equipment and no extra payment will be made for such mobilization or movement of equipment from job-to-job site.

#### 4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

Properly executed bid security shall be placed in a sealed envelope and shall be attached to the outside of the envelope containing the bid.

Bid signatures will be checked.

All addenda shall be sent certified mail, with return receipt requested, and/or facsimile or e-mail to all prospective bidders. All bidders shall include with their bids the written acknowledgment form provided in the FORM OF GENERAL BID.

The total dollar amount of each bid will be read, and the three apparent lowest bids will be selected for further consideration. These three apparent low bids will be read aloud for the benefit of the other bidders and the bid opening procedure will be closed. All those present at the bid opening may examine all bids after the bid opening and after the reading of the three apparent low bids.

#### 5. Modification

Any bidder may modify his bid by written communication delivered to and received by the County at any time prior to the scheduled closing time for receipt of bids. The communication shall not reveal the bid price but shall provide the addition or subtraction or other modification so that the final prices or terms will not be known by the County until the sealed bid is opened.

#### 6. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the County that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time named. The County's decision or judgment on these matters will be final, conclusive, and binding. The County may make such investigations as it deems necessary, and the bidder shall furnish to the County, under oath if so required, all such information and data for this purpose as the County may request.

#### 7. Conditions of Work

Each bidder must familiarize himself fully with the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor or employees performing their duties at the work site.

#### 8. Addenda and Interpretations

Addenda may be required during the bidding period to modify, clarify, or interpret the Specifications and Contract Documents. It is intended, but not guaranteed, that such Addenda shall be mailed by the Awarding Authority to all persons or parties to whom Bid, and Contract documents have been issued (Bidders of Record). Failure to receive such Addenda shall in no way relieve any bidder from the execution of its provisions. All bidders are cautioned to verify the number of Addenda that have been issued and to secure any needed copies from the Highway Commissioner.

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally and shall not be used as the basis of a claim against the County. All bidders, by bidding, expressly, and irrevocably waive any and all such claims.

Every request for such interpretation should be in writing addressed to Patrick Gavinski at [Patrick.gavinski@saukcountywi.gov](mailto:Patrick.gavinski@saukcountywi.gov) and to be given consideration must be received at least SEVEN DAYS prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective address furnished by them for such purposes), or sent via facsimile or email if time requires. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

#### 9. Security for Faithful Performance

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor and those materials, which the Contract documents require the Contractor to Purchase, under this contract as specified in the GENERAL CONDITIONS included herein. Both the performance and payment bonds shall be in the amount of 100% of the actual contract price. The surety on such bond or bonds shall be a surety company qualified to do business under the laws of the State of Wisconsin and satisfactory to the County. The bonds shall remain in force for one year after final acceptance of the work by the County, unless the County, in writing, releases the Contractor from the obligation sooner.



## 10. Power of Attorney

Attorneys-in-fact who sign Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

## 11. Project Inspection

The CONTRACTOR shall make the project site and all project records available to Highway Department staff for review during the course of the project. Highway department staff will periodically monitor the progress of work to ensure that the project is proceeding substantially as defined in the documents listed in the table of contents.

## 12. Bid Bond and Failure to Enter into Contract

All bids shall be accompanied by a bid deposit in the form of a Bid Bond, duly executed and acknowledged by the bidder, as Principal, and by a surety company qualified to do business in the State of Wisconsin, or cash, or a certified check, treasurer's or cashier's check issued by a responsible bank or trust company to Sauk County. The amount of such bid deposit shall be 10% of the value of the bid total or for each particular bid item where applicable and shall be enclosed in the sealed envelope containing the bid. Each such Bid Bond, cash or check may be held by the County as security for the fulfillment of the bidder's requirement to enter into a contract with the County.

Such security of general bidders will be returned to all except the three lowest properly responsive, responsible, and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining securities will be returned promptly after the County and the accepted bidder have executed the Contract, or if no notice of intent to award has been presented to the selected contractor within 30 days, Saturdays, Sundays and holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within 10 days after presentation thereof by the County, shall forfeit to the County, as liquidated damages for such failure or refusal, the security deposited with his/her bid, but the amount forfeited shall not exceed the difference between his/her bid price and the bid price of the next lowest properly responsive, responsible, and eligible bidder, if a contract is entered into with such other bidder. In case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the bidder, his/her bid deposit may be returned in the sole discretion of the Sauk County Highway Committee.

## 13. Obligation of Bidder

At the time of the opening of bids, each bidder will be presumed to have inspected the site, and to have read and to be thoroughly familiar with the Contract Documents (including all addenda).

The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

#### 14. Information Not Guaranteed

All information given in the Contract Documents and other documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the County. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the County does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

It is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the County or the Consultant, if any arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

#### 15. Right to Reject Bid

The County reserves the right to waive any informality in bids and to reject any and all bids, should the County deem it to be in the public interest to do so.

The County may also reject bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

#### 16. Time for Completion

The successful general bidder must agree to commence work on the date specified in the Notice to Proceed, and to fully complete the project within the time limit stated in the documents.

#### 17. Comparison of Bids

Bids will be compared on the basis of prices set forth in the bid forms.

In the event that there is a discrepancy between the lump sum or unit prices written in words and figures, the prices written in words will govern.

#### 18. Award of Contract

The Contract will be awarded to "the lowest responsible bidder" pursuant to Wisconsin Statute s. 59.52(29) as amended and/or renumbered. Such a bidder shall possess the skill, ability and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, shall otherwise comply with all applicable provisions of law, and shall have properly responded to the request for bids. Contract award shall be subject to availability of an appropriation for funding.

Within seven (7) working days of receipt of acceptable Payment Bond and Contract signed by the party to whom the Contract was awarded, the County shall sign the Contract and return to such party an executed duplicate of the Contract.

#### 19. Contractor Records

Bidders understand and agree that, because County is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Bidders. Bidder agrees to fully comply with such laws, and to cooperate with County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of county. Compliance and cooperation of Bidders shall be at their sole cost and expense.

#### 20. Insurance

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in the Contract form and in such form as shall protect him performing work covered by this Contract, and Sauk County and its employees, agents, officials, and engineering Consultant, from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The County shall be named as an additional insured as required in the Contract form. The Contractor covenants and agrees to hold the County and its employees, agents and officials harmless from loss or damage due to claims for bodily injury or death and/or property damage arising from, or in connection with, operations under this Contract.

#### 21. Compliance with Laws

The Contractor shall keep himself fully informed of, and comply with, all existing and future Federal, State and Local Laws, ordinances, rules and regulations affecting Contractor and all of Contractor's employees, agents, and subcontractors engaged or employed on the Work, the materials and equipment used in the Work or the conduct of the Work, and of all orders, decrees and other requirements of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or other Contract Documents in relation to any such law, ordinance, rule, regulation, order, decree or other requirement, the Contractor shall forthwith report to the Highway Commissioner in writing. The Contractor shall at all times observe and comply with, and cause all his agents, servants and employees to observe and comply with all such existing and future laws, ordinances, rules, regulations, orders, decrees and other requirements and he shall protect, indemnify and save harmless the County, its officers, agents, servants, employees and the

Highway Commissioner from and against any and all claims, demands, suits, liabilities, judgments, penalties, losses, damages, costs and expenses, including attorney's fee, arising from or based upon any violation or claimed violation of any such law, ordinance, rule regulation, order, decree or other requirements, whether committed by the Contractor or any of his agents, servants or employees.

Applicable provisions of Wisconsin State Statutes and Regulations and/or the United States Code and Code of Federal Regulations govern this contract and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflict between Code of Federal Regulations and State Laws and Regulations exist, the more stringent requirement shall apply.

**SECTION 00200**

**FORM OF GENERAL BID**

Bid of (hereinafter called "Bidder") \*

(\_\_\_\_) a corporation, organized and existing under the laws of the state of \_\_\_\_\_

(\_\_\_\_) a partnership

(\_\_\_\_) a joint venture

(\_\_\_\_) an individual  
doing business as \_\_\_\_\_

(\_\_\_\_) other Describe: \_\_\_\_\_

To the County of Sauk, Wisconsin (hereinafter called "County").

Greetings:

A) The undersigned Bidder, in compliance with your invitation for bids for the project known as **CTH PF Seal Coat Project**, having examined the plans and specifications and related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to execute the Contract, furnish the appropriate bonds, furnish all labor, materials (except materials which the contract documents specifically require to be purchased by the County), and supplies, and to construct the project in accordance with the contract documents and the plans and specifications within the time set forth below, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this bid is a part.

The Bidder hereby agrees to commence work on or before the date to be specified in written "Notice to Proceed" of the County, and to fully complete the project within the time specified in the bidding instructions but a contract extension shall be at the discretion of the Highway Commissioner.

B) Bidder acknowledges receipt of, and this bid includes the following addenda:

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

C.) Schedule of Prices. One option will be awarded

<b>CTH PF</b>				
<b>ITEM DESCRIPTION</b>	<b>UNIT OF MEASURE (such as "per mile, "per ton" etc.</b>	<b>QUANTITY</b>	<b>UNIT BID PRICE \$</b>	<b>TOTAL \$</b>
Square Yards (SY) Seal Coat - Installation	<b>SY</b>	<b>346,512</b>		
Gallons Seal Coat - Asphaltic Material	<b>GAL</b>	<b>103,954</b>		
Square Yards (SY) Seal Coat – Aggregate Material	<b>SY</b>	<b>346,512</b>		
Traffic control	<b>Lump Sum</b>	<b>1</b>		
Mobilization	<b>Lump Sum</b>	<b>1</b>		
			<b>TOTAL BID \$</b>	

D. Submission of the bid constitutes bidder's certification that no financial or personal relationship exists between the bidder and any county official or employee except as specifically set forth in writing attached to and made a part of the bid. The successful bidder shall disclose any such relationship which develops after submission of the bid, and before award, and any such relationship which develops during the term of the contract.

E. the bidder hereby designates the person named below as its agent for the purpose receiving all notices from Count, including but not limited to notice of award of bid. All notices sent to the person below shall be deemed received by bidder.

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

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

\_\_\_\_\_

\_\_\_\_\_

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

Email Address (optional): \_\_\_\_\_

FAX Number (optional): \_\_\_\_\_

The Bidder agrees to perform the bid work described in the specifications and shown on the plans for the following contract price: \$ \_\_\_\_\_

The above unit prices shall include all mobilization, labor, materials (except materials which the contract documents specifically require to be purchased by the County) bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that all bids for this project are subject to the applicable bidding laws of the State of Wisconsin.

The Bidder understands that the County reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal Contract set forth in these documents.

Bid security is attached in the sum of 10% of the total bid. The bid security may become the property of the County in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a performance bond and a payment bond in an amount at least equal to one hundred percent (100%).

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for \_\_\_\_\_ years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as principals, are as follows:  
(attach supplementary list if necessary)
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_

3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done, and give references that will enable the County to judge his experience, skill and business standing (add supplementary page if necessary).

<u>Completion Date</u>	<u>Project Name</u>	<u>Contract Amount</u>	<u>Design Engineer</u>	<u>Reference Name</u>	<u>Telephone No.</u>
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BY SIGNING BELOW THE BIDDER AFFIRMS AND ACKNOWLEDGES THAT: they have read and understand the bid specifications and its Attachments, if any; they have authority to enter a bid on behalf of the Entity, Corporation, or County they are signing for; they are knowingly, freely, and voluntarily bidding on this project; and that they accept and agree to be bound by the terms and conditions of bid specifications and its Attachments, if any, as outlined in the bid specifications.

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

Submitted on Behalf of: \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

COMPLETE AND SIGN BELOW:

\_\_\_\_\_  
Authorized Person's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title of Signatory

\_\_\_\_\_  
Name of Contractor

Notarization

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**SECTION 00300**

**NOTICE OF AWARD**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROJECT Description: CTH PF Seal Coat Project  
HIGHWAY DEPARTMENT  
SAUK COUNTY, WI**

The OWNER has considered the Bid submitted by you for the above-described Work in response to its Advertisement for Bids dated, and Information for Bidders.

You are hereby notified that your Bid has been accepted at the Base Bid Price of  
\$ \_\_\_\_\_ .

You are required by the Information for Bidders to execute the Contract and furnish the required CONTRACTOR's Performance Bond, Payment Bond and certificates of insurance within five (5) days, excluding Saturdays, Sundays and legal holidays from the date of this Notice to you.

If you fail to execute said Contract and to furnish said Bonds and insurance certificates within the five (5) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER's acceptance of your Bid as abandoned and as a forfeiture of your Bid Security. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the OWNER.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Highway Department  
Sauk County, WI (OWNER)

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

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged

By \_\_\_\_\_.

this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

END OF SECTION

**SECTION 00400**

**CONTRACT**

THIS CONTRACT, made this day \_\_\_\_ of \_\_\_\_\_, 201\_\_, by Sauk County hereinafter called "COUNTY" or "OWNER" acting herein through its \_\_\_\_\_ Department, and \_\_\_\_\_ doing business as \*(an individual) (a partnership) (a joint venture) (a corporation)(other: describe \_\_\_\_\_ located in the \*(City) (County) of \_\_\_\_\_ County of \_\_\_\_\_, and State of \_\_\_\_\_, hereinafter called "CONTRACTOR."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the COUNTY, the CONTRACTOR hereby agrees with the COUNTY to commence and complete the project described as follows: **CTH PF Seal Coat Project** hereinafter called the PROJECT, for the sum of \_\_\_\_\_ Dollars (\$) \_\_\_\_\_) and all extra work in connection therewith, under the terms as stated in the Contract documents; and at its own proper cost and expense to furnish all the materials, (except materials which the contract documents specifically require to be purchased by the County) supplies, machinery equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Contract Documents.

The CONTRACTOR hereby agrees to commence work under this Contract on or before a date to be specified in written "Notice to Proceed" of the COUNTY.

The CONTRACTOR further agrees to complete the project by \_\_\_\_\_. A contract extension shall be at the discretion of the \_\_\_\_\_ Director.

The COUNTY agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in herein, and to make payments on account thereof as provided in the Estimates and Payments sections.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in two (2) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

AGREED:

**SAUK COUNTY, WISCONSIN**

By: \_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)

AND

\_\_\_\_\_  
By: \_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)

**CONTRACTOR:**

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Title)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_ (City and State)

If a corporation, complete below or attach to each signed copy of a contract a notarized copy of vote of corporation authorizing the signatory to sign this contract. If attesting clerk is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the Board of Directors of the \_\_\_\_\_ held on \_\_\_\_\_  
(Name of Corporation) (Date)

at which all the Directors were present or waived notice, it was VOTED that,  
\_\_\_\_\_  
(Name) (Officer)

of this company be and hereby is authorized to execute contract and bonds in the name and behalf of said company, and affix its corporate seal thereto, and such execution of any contract or obligation in this company's name on its behalf by such \_\_\_\_\_  
(Officer)

of the company, shall be valid and binding upon this company.

I hereby certify that I am the Clerk of the \_\_\_\_\_

that \_\_\_\_\_ is the duly elected

\_\_\_\_\_ of said company, and that the above vote has

not been amended or rescinded and remains in full force and effect as of the date of this contract.

a true copy,  
ATTEST

\_\_\_\_\_  
Clerk

Place of Business

\_\_\_\_\_  
Corporate  
Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_

DAY OF \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_.

## SECTION 00500

### GENERAL CONDITIONS

#### ARTICLE 1 - GENERAL PROVISIONS

##### § 1.1 DEFINITIONS

##### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of:

1. Invitation to Bid.
2. Instructions to Bidders
3. Form of General Bid
4. Notice of Award
5. Contract
6. General Conditions
7. Notice to Proceed
8. Change Order Form
9. Certificate of Final Completion of Work
10. Scope of Work

If, during the performance of the Work, Contractor finds a conflict, error, or discrepancy in the Contract Documents, Contractor shall so report to Owner and Owner's Consultant if any, in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from Owner or Owner's Consultant, however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or should reasonably have known thereof. Figured dimensions on Plans shall take precedence over scale dimensions.

Detailed Plans in the Contract Documents shall take precedence over general Plans.

The Contract Documents are intended to include all work and materials necessary for completion of the Work. Any incidental item of material, labor, or detail required for the proper execution and completion of the Work and omitted from the Contract Documents but obviously required by governing codes, local regulations, trade practices, operational functions, and good workmanship, shall be provided as a part of the Work without extra charge, even though not specifically detailed or mentioned.

A Modification is (1) a written amendment to the contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the County or (4) a written order for a minor change in the Work issued as allowed by the terms of this contract.

In the event of a conflict among the Contract Documents, they shall be construed according to the following priorities:

1. Modifications
2. Contract
3. General Conditions



4. Scope of Work
5. Instructions to Bidders
6. Invitation to Bid
7. Notice of Award
8. Notice to Proceed
9. Form of General bid

### **§ 1.1.2 THE CONTRACT**

The Contract represents the entire and integrated Contract between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should any drawings and specifications disagree in themselves or with each other; the Contractor shall provide the better quality or greater quantity of Work unless otherwise directed by written addendum to the Contract.

### **§ 1.1.3 THE WORK**

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials (except materials which the contract documents specifically require to be purchased by the County) and equipment incorporated or to be incorporated in such construction. Deliveries shall be FOB destination, freight prepaid and included unless otherwise specified. County will reject shipments sent C.O.D. or freight collect. All materials, equipment, and supplies provided to the County must fully comply with all safety requirements as set forth by the Wisconsin Department of Commerce and all applicable OSHA Standards. If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29 CFR 1910.1200, provide one (1) copy of the Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

**§ 1.1.3.1** Whenever a material, article, or piece of equipment is identified on the Drawings, Specifications, or elsewhere in the Contract Documents by reference to brand name or catalog numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall may be considered by the Owner. The Contractor may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the Contract Documents by reference to brand name or catalog number and if, in the opinion of the Owner, such material, article, or piece of equipment is of equal substance and function to that specified, the Owner may approve its substitution and use by the Contractor. Any cost differential shall be deductible from the Contract Price and the Contract Documents shall be appropriately modified by Change Order. The Contractor warrants that if substitutes are approved, no major changes in the function or general design of the Project will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time.

§ 1.1.3.2 It is understood that, except as otherwise specifically stated in the Contract Document, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

§ 1.1.3.3 Contractor shall store Materials and equipment so as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection.

§ 1.1.3.4 Contractor shall apply, install, connect, erect, use, clean and condition manufactured articles, materials and equipment as directed by the manufacturer.

§ 1.1.3.5 If Contractor is required to supply samples of materials, manufactured articles or equipment, items used shall conform with such samples.

§ 1.1.3.6 Materials, supplies or equipment to be incorporated into the Work shall not be purchased by the Contractor or a Subcontractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

§ 1.1.3.7 The Owner and the Owner's Consultant if any, shall at all times, have access to the Work. In addition, authorized representatives and agents of any participating Federal or State agency shall be permitted to inspect all work, materials, payrolls, records or personnel, invoices of materials, and other relevant data and records as required by any applicable law or regulation. The Contractor shall provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof.

#### **§ 1.1.4 THE PROJECT**

The project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

#### **§ 1.1.5 OR EQUAL**

The use of the words "Or Equal" following the name of any manufacturer, vendor or proprietary product shall be understood to mean that articles or materials may be substituted which, in the opinion of the County, are equal in quality, durability, appearance, strength, design and performance to the articles or materials named or described and will perform adequately in providing a first-class facility.

When submitting shop drawing information on articles or materials which are being proposed as substitutes for specified items, the Contractor shall clearly identify them as such. If the articles or materials are accepted as equal to those on which dimensions on the drawings are based, any dimensional variance from those shown and/or specified shall be shown on the shop drawings prepared by the Contractor, illustrating the manner in which conformity to dimensions and design is to be obtained. All such drawings shall be subject to the approval of the County and the

installation of the article shall not proceed without first obtaining said approval.

**§ 1.1.6 OWNER** - Sauk County and all Departments responsible for the execution of this contract.

**§ 1.1.7 AWARDING AUTHORITY** - same definition as OWNER.

**§ 1.1.8 BIDDER** - Any person, firm or corporation submitting a BID for the work.

**§ 1.1.9 FINAL COMPLETION** - The work has been fully completed and ready for its intended use as required by Contract Documents and to the satisfaction of CONSULTANT if any and OWNER, and CONTRACTOR's other obligations under the Contract Documents have been fulfilled. If a tentative list of items to be completed or corrected was issued with a certificate by Substantial Completion or issued subsequent thereto, such items shall be completed or corrected before work is considered fully completed.

**§ 1.2 EXECUTION, CORRELATION AND INTENT**

**§ 1.2.1** The Contract Documents shall be signed in not less than quadruplicate by the County and Contractor.

**§1.2.2** By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

**§1.2.3** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

**§1.2.4** The organization of any specifications into divisions, sections and articles, and the arrangement of any drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.5** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.2.6** All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

**§ 1.2.7** Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

**§ 1.2.8** Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally. The Contractor shall furnish and ensure that all subcontractors furnish suitable tools and building appliances to perform the work to be done. Any tools or appliances that shall not, in the judgment of the Owner or the Owner's Consultant, be suitable or competent to produce this result may be ordered from the work by Owner or Owner's Consultant, and such tools or appliances shall be substituted therefore by the Contractor as will meet with the approval of the Engineer. Work shall be completed in a neat and workmanlike manner at the locations, on the foundations, and to the elevations shown on the Plans, unless directed otherwise by the Owner or Owner's Consultant during installation. All equipment shall be correctly field aligned, leveled and adjusted for satisfactory operation and shall be installed so that proper and necessary connections can be made readily between the various units. The Contractor shall furnish, install, and protect all necessary accessories and attachments and all other appurtenances needed for proper installation of the work. The work shall be performed in accordance with well known, established practice and standards recognized by Architects, Engineers, and the trade.

**§ 1.2.9** All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

**§ 1.2.10** Where reasonably practical, each piece of material shall have noticeable identification markings. Equipment shall be supplied with nameplate tags or identification strips. All panels, cabinets, controls, alarms, safety switches, circuit breakers, motor starters, and similar items shall be identified with laminated phenolic identification plates with white letters on black background, or other reasonable identification plates, and mounted with screws, or otherwise securely and reasonably mounted. Devices mounted in panels shall be identified by tags located inside the panel on the sub-plates or in the device itself where it can be easily read.

**§ 1.2.11** Contractor shall obtain and supply to Owner, in advance of beginning work, operation and maintenance manuals for all items to be installed by Contractor for which such manuals are reasonably necessary for operation and maintenance. Manuals shall be complete, detailed guides for the maintenance and operation of equipment. Manuals shall include information necessary for starting, adjusting, maintaining, and dismantling and reassembling of the complete units and sub-assembly components. Manuals shall contain specifications, drawings, and descriptions of equipment; installation instructions; operation, maintenance, and lubrication details; parts list; and performance data with curves, wiring diagrams and schematics. An index covering all component parts of the manual shall be included.

**§ 1.2.12** If the Contractor or subcontractors are installing equipment, the Contractor shall have an experienced, competent, and authorized representative of the manufacturer or supplier approve the installation of each item of equipment. The representative shall provide start-up services, including inspection, checking, and adjusting, if necessary, to assure that the equipment has been properly installed, lubricated and accurately aligned, is free from undue stress imposed by connections, and has been operated under full load conditions and found to have operated

satisfactorily or has been adjusted to operate satisfactorily. The representative shall certify that the equipment is in complete accordance with manufacturer's standards. In addition, the Contractor and manufacturer's representative shall assist the Owner's personnel in initial equipment start-up and instruct the Owner's personnel in the proper use, operation, sequence of functions, and similar information to fully acquaint the Owner's personnel in the proper use, care, and control of all materials, equipment, systems, and devices contained in the project.

**§ 1.2.13** The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Owner or Owner's Consultant, nor the issuance of a Certificate of Substantial Completion, nor any payment by Owner to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Owner, nor any act of acceptance by Owner or Owner's Consultant, nor any failure to do so, nor any review and approval of a shop drawing or sample submission, nor the issuance of a notice of acceptability by Owner or Owner's Consultant, nor any correction of defective Work by Owner or anyone on Owner's behalf will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents.

### **§1.3 OWNERSHIP AND USE OF DOCUMENTS**

**§1.3.1** All Drawings, Specifications, and copies thereof furnished by the County are and shall remain the County's property. They are to be used only with respect to this Project and are not to be used on any other project without the prior written consent of the County. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the County at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

## **ARTICLE 2 - CONSULTANT**

### **§ 2.1 COUNTY'S REPRESENTATIVE**

**§ 2.1.1** The designated representative of the County, will administer the Contract and visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. For this contract, the designated representative of the County is: Patrick Gavinski, Highway Commissioner. The County's representative shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The County may also retain a separate Project Manager, who shall work with the County's representative in the administration of the Contract

**§2.1.2** The Highway Commissioner, Project Manager, and Consultant if any shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the County may perform its functions under the Contract Documents.

§2.1.3 The Highway Commissioner will render information necessary for the proper execution or progress of the Work within seven days of any request by the contractor or in accordance with any time limit agreed upon.

§2.1.3 Based on his observations and an evaluation of the Contractor's Applications for Payment, the Highway Commissioner, in consultation with the Contractor, will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in this Contract.

§2.1.4 The Highway Commissioner and/or Consultant if any will render information necessary for the proper execution or progress of the Work within twenty (20) days of any request by the contractor or in accordance with any time limit agreed upon.

§2.1.5 The Highway Commissioner and Consultant if any will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with the terms of this contract whether or not such Work be then fabricated, installed or completed. Any such rejection of work shall not relieve the Contractor of the responsibility for maintaining protection of the Work and the County's property.

§2.1.6 The Highway Commissioner and Consultant, if any will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. The approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.1.7 The Highway Commissioner and/or Consultant, if any will prepare Change Orders in accordance with the terms of this Contract and will have authority to order minor changes in the Work as provided in this Contract.

§ 2.1.8 The Consultant and/or Highway Commissioner and/or Consultant, if any will conduct inspections to determine the date of Substantial Completion and Final Completion, will review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

## **ARTICLE 3 - COUNTY**

### **§ 3.1 DEFINITION**

§ 3.1.1 The County is the person or entity identified as such in the County-Contractor Contract and is referred to throughout the Contract Documents as if singular in number. The term County means the County or, as applicable, the County's authorized representative which for this Project shall be the Highway Commissioner and Consultant if any. The County may also retain a separate Project Manager, who shall work with the Consultant and/or Highway Commissioner and the Consultant if any, in the administration of the Contract. The form of Contract between

the County and the Consultant and/or the Project Manager, if there are either, shall be made available to the Contractor upon request.

### **§ 3.2 INFORMATION AND SERVICES REQUIRED OF THE COUNTY**

**§ 3.2.1** The County shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the County's obligations under the Contract.

**§ 3.2.2** If necessary, The County shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Except as otherwise stated in the Contract Documents, the Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the County except to the extent that the Contractor's review thereof reveals, or in the exercise of reasonable diligence should have revealed, any inaccuracy or incompleteness therein. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

**§ 3.2.3** Information or services required of the County by the Contract Documents shall be furnished by the County with reasonable promptness.

**§ 3.2.4** Unless otherwise provided in the Contract Documents, the Contractor will, upon request, be furnished, free of charge, 6 copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work, all additional copies will be furnished upon request at the cost of reproduction.

### **§ 3.3 COUNTY'S RIGHT TO STOP THE WORK**

**§ 3.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by this Contract, or persistently fails to carry out Work in accordance with the Contract Documents, the County may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity. The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the County.

### **§ 3.4 COUNTY'S RIGHT TO CARRY OUT THE WORK**

**§ 3.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including County's expenses and compensation for the Consultant's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County. Notwithstanding the foregoing, County shall not, in any circumstance be required to correct deficiencies in lieu of exercising any other remedy available under this contract, or at law, including but not limited to termination of this contract.

## **ARTICLE 4 - CONTRACTOR**

### **§ 4.1 GENERAL**

§ 4.1.1 The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 4.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 4.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the County in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

### **§ 4.2 REVIEW OF CONTRACT DOCUMENTS BY CONTRACTOR**

§ 4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the County any error, inconsistency or omission he may discover. If the Contractor performs any construction activity it knows or reasonably should know involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the County, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for such correction.

§ 4.2.2 Any claim by the Contractor or Subcontractors that, in submitting their respective bids, they did not include all items as shown in the Contract Documents, will be given no consideration for an adjustment of any kind. If any item is specified in a Section which would not normally furnish this item it shall be the responsibility of the Contractor to coordinate the situation with the Subcontractor, and if the item under consideration is not to be provided by the Subcontractor it shall be the responsibility of the Contractor to provide the work in question, without any additional cost to the County.

### **§ 4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

§ 4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the County and Consultant, if any and shall not proceed with that portion of the Work without further written instructions from the \_\_\_\_\_ Director and/or Consultant if any.

§ 4.3.2 The Contractor shall be responsible to the County for acts and omissions of the



Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors this obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the Work.

§ 4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the County in its administration of the Contract, or by inspection, tests or approvals required or performed under this Contract by persons other than the Contractor.

#### **§ 4.4 LABOR AND MATERIALS**

§ 4.4.1 Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, if applicable.

§ 4.4.2 The Contractor shall enforce good conduct, strict discipline and good order among the Contractor's Employees, subcontractors, employees of subcontractors, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractors shall ensure that all such persons have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any such person who, in the opinion of Owner or Owner's Consultant does not perform their work in a skillful manner, or who appears to not be reasonably competent, or who acts in a disorderly or intemperate manner shall, at the request of Owner or Owner's Consultant, be discharged from the work, replaced, and shall not be employed again on any portion of the work without the written approval of Owner or Owner's Consultant. If any such person is not immediately removed upon request, any work done by such person shall not be required to be estimated, accepted, or paid for, and shall, upon request of Owner or Owner's Consultant, be replaced.

#### **§ 4.5 WARRANTY**

§ 4.5.1 The Contractor warrants to the County that materials and equipment furnished under the Contract will be of first quality, new, and not obsolete, discontinued or defective, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents and, promptly after written notification of non-conformance, shall be repaired or replaced by the Contractor with Work conforming to such requirements. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.5.2 The Contractor shall be responsible for determining that all materials furnished for the Work meets all requirements of the Contract Documents. The County may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other

evidence which, in the opinion of the County, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

§ 4.5.3 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the County in writing of the nature of such deviations at the time the material is submitted for approval.

§ 4.5.4 In informing the County of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the County, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the County may reject such substitution or deviation without further investigation.

§ 4.5.5 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the County, unless such substitution was made at the written request or direction of the County.

§ 4.5.6 The warranty provided under the section of this Contract addressing “Warranty” shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 4.5.7 The Contractor shall procure and deliver to the County, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the County that the warranty will be performed in accordance with its terms and conditions.

§ 4.5.8 The Contractor shall guarantee all Work for a period of 2 years after Date of Substantial Completion, or by the terms of any special guarantee required by the Contract Documents. The Contractor shall, upon written notice from the County, promptly correct defective Work or Work not in accordance with the Contract Documents.

## § 4.6 TAXES

§ 4.6.1 The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below. The County's tax-exempt number may be requested if necessary. Under Section 77.54 (9m) the Wisconsin Statutes, The sales price from the sale of and the storage, use, or other consumption of tangible personal property, or items or property under s. 77.52(1)(b) or (c), sold to a construction contractor that, in fulfillment of a real property construction activity, transfers the tangible personal property, or

items or property under s. 77.52(1)(b) or (c), to County if such tangible personal property, or items or property, becomes a component of a facility in this state that is owned by the County, are not subject to sales tax. "Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and wastewater treatment facility, but does not include a highway, street, or road. Contractor and all subcontractors shall avail themselves of this exemption to the full extent allowed by law, and shall comply with all related legal requirements, including but not limited to record keeping requirements.

#### **§ 4.7 PERMITS, FEES AND NOTICES**

**§ 4.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all necessary permits and fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract, and which are legally required when bids are received, or negotiations concluded.

**§ 4.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

**§ 4.7.3** If the Contractor observes that portions of the Contract Documents are at variance With any applicable laws, ordinances, rules, regulation, or lawful orders of public authorities, the Contractor shall promptly notify the County in writing, and necessary changes shall be accomplished by appropriate Modification.

**§ 4.7.4** If the Contractor performs Work it knows or should know to be contrary to by laws, ordinances, rules, regulations and lawful orders of public authorities without such notice to the Highway Commissioner and County and Consultant if any, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### **§ 4.8 SUPERINTENDENT**

**§ 4.8.1** The Contractor shall employ a competent full-time superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. The Contractor shall remove the superintendent if requested to do so by the County and shall replace him with a competent person acceptable to the County.

**§ 4.8.2** The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the County, every reasonable opportunity for the installation of Work and the storage of materials.

**§ 4.8.3** The Contractor shall arrange for and attend job meetings with the County and such other persons as the County may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main

office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Highway Commissioner and/or Consultant if any. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

**§ 4.8.4** The Contractor shall provide the town or towns in which the Work is being completed, with the name and telephone number of the project superintendent and an emergency telephone number where he can be reached 24 hours per day for the duration of the construction period.

#### **§ 4.9 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 4.9.1** The Contractor, within ten (10) calendar days after being awarded the Contract, shall prepare and submit for the County's information and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised, subject to the County's approval, at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall be in such form and contain such information as the County reasonably requires. The construction schedule shall be resource loaded for the Contractor and all subcontractors, with each resource identified by name, description, unit of measure, and calendar assignment.

#### **§ 4.10 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 4.10.1** The Contractor shall maintain at the site for the County one record copy of the Scope of Work, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Highway Commissioner and Consultant if any and shall be delivered to the Highway Commissioner and Consultant for submittal to the County upon completion of the Work.

#### **§ 4.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 4.11.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 4.11.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 4.11.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 4.11.4** The Contractor shall review for compliance with the Contract Documents, approve and

submit to the Highway Commissioner and Consultant if any Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the County or of separate contractors.

**§ 4.11.5** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor.

**§ 4.11.6** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the County's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the County in writing of such deviation at the time of submittal and (1) the County has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the County's approval thereof.

#### **§ 4.12 USE OF SITE**

**§ 4.12.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

#### **§ 4.13 CUTTING AND PATCHING**

**§ 4.13.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. This section is not intended to allow cutting, fitting or patching, in instances in which such practices are not reasonable and customary.

**§ 4.13.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the County or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the County or a separate contractor except with written consent of the County and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the County or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

#### **§ 4.14 CLEANING UP**

§ 4.14.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 4.14.2 If the Contractor fails to clean up as provided in the Contract Documents, the County may do so and the cost thereof shall be charged to the Contractor.

#### **§ 4.15 ACCESS TO WORK**

§ 4.15.1 The Contractor shall at all times provide the County access to the Work in preparation and progress wherever located.

§ 4.15.2 Contractor shall be responsible for supplying sanitary facilities including portable restrooms and hand-washing stations for Contractor, its employees and those of their subcontractors. The condition and maintenance of these facilities must always be such as will meet the approval of the Owner.

§ 4.15.3 Contractor shall supply all water needed for the work.

#### **§ 4.16 ROYALTIES, PATENTS AND COPYRIGHTS**

§ 4.16.1 The Contractor shall pay all royalties and license fees for patents, trademarks and copyrights that are in any way involved in the work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters patent or copyright, the rights for such use shall be provided for by suitable legal Contract with the patentee or owners. The Contractor shall defend suits and claims for infringement of copyrights and patent rights and shall hold the County harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the County. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the County.

### **ARTICLE 5 - SUBCONTRACTORS**

#### **§ 5.1 DEFINITIONS**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The Contractor shall

submit one copy of each of his subcontracts to the Highway Commissioner and Consultant if any and demonstrate the subcontractor's ability to complete the portion of the work he/she is charged with. This shall include compliance with contract requirements.

## **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS**

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the County the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Highway Commissioner or Consultant if any will promptly reply to the Contractor in writing stating whether or not the County, after due investigation, has reasonable objection to any such proposed person or entity.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the County has made reasonable and legally permissible and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the County has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the County has no reasonable objection.

**§ 5.2.4** The Contractor shall change a Subcontractor, person or entity previously selected if the County makes reasonable objection to such person or entity.

## **§ 5.3 SUBCONTRACTUAL RELATIONS**

**§ 5.3.1** By appropriate contract, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the County. Each subcontract shall preserve and protect the rights of the County under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract contract, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the County. Where appropriate, the Contractor shall require each Subcontractor to enter into similar contracts with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract contract, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract contract which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## **ARTICLE 6 - CONSTRUCTION BY COUNTY OR BY SEPARATE CONTRACTORS**

### **§ 6.1 COUNTY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The County reserves the right to perform construction or operations related to the Project

with the County's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate County-Contractor Contract.

**§ 6.1.3** The County shall provide for coordination of the activities of the County's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the County in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the County until subsequently revised.

## **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the County and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the County or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Highway Commissioner and Consultant if any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the County's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The County shall be reimbursed by the Contractor for costs incurred by the County which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

**§ 6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the County or separate contractors as provided in this contract.

## **ARTICLE 7 - CHANGES IN THE WORK / CLAIMS FOR ADDITIONAL COSTS**

### **§ 7.1 CHANGE ORDER**

**§ 7.1.1** A Change Order is a written order to the Contractor signed by the County, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.



**§ 7.1.2** The County, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents and applicable State Statutes.

**§ 7.1.3** Upon request of the County, the Contractor shall without cost to the County submit to the Highway Commissioner and Consultant if any, in such form as the County may require, an accurate written estimate of the cost of any proposed extra Work or change. The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown if required by the County. The Contractor shall promptly revise and resubmit each estimate if the Highway Commissioner or Consultant if any determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors. If required by the Highway Commissioner or Consultant if any, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Highway Commissioner and Consultant if any bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Contractor's expense. The Contractor shall state in the estimate any extension of time required for the completion of the Work if the change or extra work is ordered.

**§ 7.1.4** The cost or credit to the County resulting from a change in the Work shall be determined in one or more of the following ways:

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. by unit prices stated in the Contract Documents or subsequently agreed upon;
3. by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. by the method provided in the section of this contract addressing situations in which none of the above methods are agreed upon.

**§ 7.1.5** If none of the methods set forth in the section of this contract which provide methods of determining cost or credit is agreed upon, the Contractor, provided he receives a written order signed by the County, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the County on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under the section of this contract which provide methods of determining cost or credit above, the Contractor shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: actual cost of materials, including sales tax and cost of delivery; labor, including social security, unemployment insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; bond premiums, and rental value of equipment and machinery. The amount of credit to be allowed by the Contractor to the County

for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 7.1.6 Unit prices shall be as stated in the Bid Form and the Contract shall include all costs of the Contractor to the County as listed in the section of this Contract which provide methods of determining cost or credit. No additional charges shall be allowed for these items under any circumstances.

## **§ 7.2 CONCEALED CONDITIONS**

§ 7.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

## **§ 7.3 MINOR CHANGES IN THE WORK**

§ 7.3.1 The County will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order, and shall be binding on the County and the Contractor. The Contractor shall carry out such written orders promptly, regardless of whether it objects to an absence of adjustment in the Contract Time or Contract Sum.

## **§ 7.4 CLAIMS FOR ADDITIONAL COSTS**

§ 7.4.1 Definition. The word "Claim" shall mean a written demand by the Contractor for an increase in the Contract Time or the Contract Sum. The Contractor is responsible for substantiating its Claims. The word "Claim" shall not include claims by the County. The County may withhold from the Contractor the value of any claims against the Contractor.

§ 7.4.2 Time Limits on Claims. Contractor must initiate Claims within fourteen (14) calendar days after occurrence of the event giving rise to such Claim by written notice to the County. Such written notice must (1) be signed by the Contractor; (2) conspicuously identify on its face that the notice serves as a notice of claim; (3) explain in sufficient detail the basis of the Claim; (4) identify the date of the event giving rise to such Claim; and (5) state the exact dollar amount of the increase in the Contract Sum being requested, if any, and the number of days extension to the Contract Time sought, if any. THIS NOTICE SHALL BE GIVEN BY THE CONTRACTOR BEFORE PROCEEDING TO EXECUTE THE WORK, EXCEPT IN AN EMERGENCY ENDANGERING LIFE OR PROPERTY. No such claim shall be valid unless so made.

§ 7.4.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1)

any written interpretation by the County, (2) any written order by the County to stop the Work where the Contractor was not at fault, (3) failure of payment by the County, the Contractor shall make such claim as provided in in the sections of this contract concerning Additional Claims for Costs. Claims properly made, in reasonable amounts shall be paid by County with the final payment due under the Contract.

## **ARTICLE 8 - TIME**

### **§ 8.1 DEFINITIONS**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the County-Contractor Contract or such other date as may be established therein.

**§ 8.1.3** The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the County when construction is substantially complete, in accordance with the Contract Documents, other than only customary punch list items, the lack of completion of which will not interfere with the County's use, so the County can lawfully occupy and utilize the Work or designated portion thereof for the use for which it is intended. The Date of Final Completion of the Work is the date on which the County issues its final Certificate for Payment in accordance with the terms of this contract.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### **§ 8.2 PROGRESS AND COMPLETION**

**§ 8.2.1** All time limits stated in the Contract Documents are of the essence of the Contract.

**§ 8.2.2** The Contractor shall begin the Work on the date of commencement as defined in this contract. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, and Final Completion thereafter in accordance with the provisions of the Contract Documents. If the Contractor fails to keep pace with the construction schedule prepared pursuant to this contract, as measured by the certificates for payment issued by the Highway Commissioner or Consultant if any, the County may require the Contractor, at the Contractor's sole cost, to accelerate the progress of the work by adding personnel or increasing the hours of work or by other means acceptable to the County.

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the County or by any employee of the County, or by any separate contractor employed by the County, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, or any causes beyond the Contractor's or its Subcontractor's control, or by delay authorized by the County, then, provided such delay in no way results from the act or neglect of the Contractor or any of its Subcontractors, the Contract Time may be extended by

Change Order for such reasonable time as the County may determine.

**§ 8.3.2** Any claim for extension of time shall be made in writing to the County not more than seven (7) days after the commencement of the delay; otherwise, it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

**§ 8.3.3** If no agreement is made stating the dates upon which interpretations of the Contract Documents by the Highway Commissioner or Consultant if any shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretation until fifteen days after written request is made for them, and not then unless such claim is reasonable.

**§ 8.3.4** The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the County on account of any delay in the commencement or performance of the Work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the County, or otherwise. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

#### **§ 8.4 LIQUIDATED DAMAGES**

**§ 8.4.1** It is expressly understood and agreed, by and between the Contractor and County, that the time for the completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial and/or residential conditions prevailing in this locality. If the said Contractor shall neglect, fail or refuse to substantially complete the Work within the times herein specified, or any proper extension thereof granted by the County, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the County One-hundred dollars (\$100.00) per day, not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day that the Contractor shall be in default after the time stipulated for completing the Work. The said amount is fixed and agreed upon by and between the Contractor and the County because of the impracticability of fixing and ascertaining the actual damages the County would in such event sustain, and said amount is agreed to be the amount of damages which the County would sustain and said amount shall be deducted by the County from periodic payments.

### **ARTICLE 9 - PAYMENTS AND COMPLETION**

#### **§ 9.1 CONTRACT SUM**

**§ 9.1.1** The Contract Sum is stated in the Contract and, including authorized adjustments, is the total amount payable by the County to the Contractor for performance of the Work under the Contract Documents. All references to progress payment, partial payments, or any other payments to be made before full completion shall apply only if the contract specifically calls for such payments.

#### **§ 9.2 APPLICATIONS FOR PAYMENT**

§ 9.2.1 The Contractor shall submit to the Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment upon belief that 100% of the installation is complete. The Application shall contain a separate line item or section for each sub-trade category and a listing of the amount paid to each subcontractor as of the date of the Application.

§ 9.2.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.2.3 Unless otherwise provided in the Contract Documents, upon approval of County, payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the County, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the County to establish the County's title to such materials or equipment or otherwise protect the County's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. The Contractor shall assume responsibility to protect all such materials from loss or damage at no cost to the County, until they are finally incorporated into the Work, whether or not they have been paid for by the County.

§ 9.2.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the County either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

### **§ 9.3 CERTIFICATES FOR PAYMENT**

§ 9.3.1 The Highway Commissioner or Consultant, if any will, within ten days after receipt of the Contractor's properly completed and supported Application for Payment, either issue to the County a Certificate for Payment, with a copy to the Contractor, for such amount as the Highway Commissioner or Consultant, if any determines is properly due, or notify the Contractor and County in writing of the Highway Commissioner or Consultant if any reasons for withholding certification in whole or in part as provided in this contract.

§ 9.3.2 The issuance of a Certificate for Payment by the Highway Commissioner or Consultant, if any shall not be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to

ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

#### **§ 9.4 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.4.1** The County shall withhold its Payment in whole or in part, to the extent necessary reasonably to protect itself. If the County is unable to make payment in the amount of the Application, it will notify the Contractor as provided in this Contract. If the Contractor and the County cannot agree on a revised amount, the County will issue a Certificate for Payment for the amount for which it determines is properly due. The County may also decline to make payment and the Highway Commissioner or Consultant, if any, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in its opinion to the County from loss because of:

1. defective work not remedied,
2. third party claims filed or reasonable evidence indicating probable filing of such claims,
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
5. damage to the County or another Contractor,
6. reasonable evidence that the Work will not be completed within the Contract Time, or
7. material failure to carry out the Work in accordance with the Contract Documents.

**§ 9.4.2** When the grounds of this contract for deciding to withhold certification are removed, payment shall be made for amounts withheld because of them.

#### **§ 9.5 PROGRESS PAYMENTS**

**§ 9.5.1** After the Highway Commissioner or Consultant if any has issued a Certificate for Payment, the County shall make payment in the manner and within the time provided in the Contract Documents. The County reserves the right to a 10% general retainage from each progress payment, which retainage shall be released to the Contractor upon final completion, less amounts properly allocated to punch list work and potential claims of the County.

**§ 9.5.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the County, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work.

**§ 9.5.3** The County shall not have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

**§ 9.5.4** No Certificate for a progress payment, nor any progress payment, nor any partial or entire

use or occupancy of the Project by the County, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## **§ 9.6 SUBSTANTIAL COMPLETION**

**§ 9.6.1** When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the County, is substantially complete as defined in this Contract, the Contractor shall prepare for submission to the County a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the County on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the County and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the County and the Contractor for their written acceptance of the responsibility assigned to them in such Certificate.

**§ 9.6.2** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and Certification by the Highway Commissioner or Consultant, if any, the County shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents, if the Contract Documents call for any payment upon substantial completion.

**§ 9.6.3** The Contractor shall complete and correct any incomplete or defective work within forty-five (45) calendar days from the date of Substantial Completion.

## **§ 9.7 PARTIAL OCCUPANCY OR USE**

**§ 9.7.1** The Contractor agrees to the use and occupancy of the Project or any portion thereof before Substantial Completion of the Work. The County will cooperate with the Contractor with respect to the completion of the Work by taking such reasonable steps as may be possible to avoid interference with the Contractor's Work provided that they do not interfere with the proper functioning of the facility. The Contractor shall not be responsible for wear and tear or damage resulting solely from temporary occupancy. Use and occupancy of any part of the Work prior to Substantial Completion shall not relieve the Contractor from maintaining the required payment and performance bonds and insurance required by this Contract.

## **§ 9.8 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.8.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Consultant and/or Highway Commissioner or Consultant, if any will make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with

the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable.

**§ 9.8.2** Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the County (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County or his property might in any way be responsible, have been fully paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), if required by the County, other data establishing payment or satisfaction of all such obligations, receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the County. If any Subcontractor refuses to furnish a release or waiver required by the County, the Contractor may furnish a bond satisfactory to the County to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the County all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

## **ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take all reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. all employees on the Work and other persons who may be affected thereby;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying County and users of adjacent sites and utilities.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual



methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except damage or loss solely attributable to the acts or omissions of the County, the Highway Commissioner or anyone directly or indirectly employed by the County, or by anyone for whose acts the County or Highway Commissioner may be liable, and not attributable to the acts or omissions of the County, the Highway Commissioner or anyone directly or indirectly employed by them, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligation under other sections of this contract.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the County.

**§ 10.2.7** The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

**§10.2.8** The Contractor shall at all times protect excavations, trenches, buildings and materials from rainwater, groundwater, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

**§ 10.2.9** The Contractor shall remove snow and ice which might result in damage or delay.

**§ 10.2.10** During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the County, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure, adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored on the premises.

### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** If the Contractor encounters or recognizes on the site any material known or reasonably believed to be hazardous, including but not limited to asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop Work in the area affected and report the condition to the County in writing. The Contractor and the County shall cooperate in implementing measures to remove or contain said material and the Contractor shall comply with all directions of the Highway Commissioner and Consultant, if any in the implementation of such removal or containment.

## **§ 10.4 EMERGENCIES**

**§ 10.4.1** In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in the sections of the contract which address Changes in the Work.

## **ARTICLE 11 – INSURANCE, BONDS & INDEMNIFICATION**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of County, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations;

**§ 11.1.2** The insurance required by this contract shall include all major divisions of coverage, and shall be on a comprehensive general basis including Premises and Operations (including XC-U), County's and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or those set forth in the Contract Documents, whichever is greater.

All insurance shall be written on an occurrence basis, unless the County approves in writing coverage on a claims-made basis. Coverage's, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The County shall be added as an Additional Insured on policies as required herein.

Coverage for such liability insurance shall be provided by a company or companies reasonably acceptable to the County and authorized to do business in Wisconsin. Contractor shall furnish to County written confirmation as to the insurance carrier's most current financial ratings when it submits certificates of insurance.

**§ 11.1.3** Certificates of insurance acceptable to the County, and, where required by the contract documents, listing the County as an additional insured shall be filed with the County prior to commencement of the Work. These certificates and the insurance policies required by this Contract shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the County. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by this Contract. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. These certificates shall set forth evidence of all coverage required by this Contract. The Contractor shall furnish to the County copies of any endorsements that are subsequently issued amending limits of coverage.

In case of any sublet of work under this Contract, the Contractor shall furnish evidence that each and every subcontractor has in force and effect insurance policies providing coverage identical to that required of the successful vendor.

## **§ 11.2 COUNTY'S LIABILITY INSURANCE**

**§ 11.2.1** The Contractor shall procure and pay for an County's policy of County's protective liability insurance insuring the County and its officers, employees and agents against claims which may arise from operations under the Contract or relating thereto.

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Coverage for such liability insurance shall be provided by a company or companies reasonably acceptable to the County and which have, and shall maintain throughout the pendency of this contract, a minimum financial rating of not less than A+ according to A.M. Best or AAA according to Moody's. Contractor shall furnish to County written confirmation as to the insurance carrier's most current financial ratings when it submits the Certificate of Insurance. Such insurance shall include the interests of the County, the Contractor, Subcontractors and Sub-subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "all risks" insurance for physical loss or damage including without duplication, theft, vandalism and malicious mischief. This insurance shall also cover portions of the Work stored off the site or in transit. If this insurance is written with stipulated amounts deductible, the County shall not be responsible for any difference between the payments made by the insurance carrier and the claim. The policy shall contain a provision that coverages afforded under policies will not be canceled or allowed to expire until at least 30 days' written notice has been given to the County. The County shall be named insured within the policy.

**§ 11.3.2** The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.3 The County shall have the power to adjust and settle with its insurers any loss for which it has obtained insurance.

§ 11.3.4 Upon the occurrence of an insured loss, the County and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If after such a loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

**§ 11.4 MINIMUM AMOUNT OF INSURANCE**

§ 11.4.1 In no case shall the limits of liability for the insurance required by this Contract be less than:

Worker's Compensation:

- a. Coverage A: Limits – Statutory
- b. Coverage B: Employer's Liability Limits
- c. Bodily Injury by Accident - \$100,000 each accident minimum
- d. Bodily Injury by Disease - \$100,000 each employee minimum
- e. Bodily Injury by Disease - \$500,000 policy limit minimum

- a. Commercial General Liability:
  - General aggregate: \$1,000,000
  - Products-completed Operations Aggregate: \$1,000,000
  - Personal and Advertising injury: \$1,000,000
  - Each Occurrence: \$1,000,000
- b. Automobile Liability:
  - Bodily injury and property damage and combined single limit \$1,000,000
- c. Umbrella excess liability:
  - General Aggregate: \$1,000,000
  - Each occurrence: \$1,000,000

Certificates of insurance are required for all policies. The Certificates of \_\_\_\_\_ and \_\_\_\_\_ shall name the County as an additional insured on the policy and shall require that a thirty (30) day cancellation notice be given to the County. An updated copy of the Certificate shall be provided anytime a change is made to any policy which affects any requirement under this contract. The parties intend that neither the insurance requirements, the insurance limits required herein, nor any other part of this contract, or the contract documents be deemed to limit any liability of Contractor.

**§ 11.5 PERFORMANCE BOND AND PAYMENT BOND**

§ 11.5.1 The Contractor shall furnish a Performance Bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a Payment Bond in an amount not less than one hundred percent (100%) of the

Contract price as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law, and in a form acceptable to the County, and shall remain in effect through the one-year warranty period.

## **§ 11.5 INDEMNIFICATION**

**§ 11.5.1 INDEMNIFICATION** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the County and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance or failure of performance of the Work by the Contractor or Subcontractor(s). Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section. In claims against any person or entity indemnified under this section by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If any portion of the work should be covered contrary to the request of the County or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the County, be uncovered for his observation and shall be replaced at the Contractor's expense.

**§ 12.1.2** If any other portion of the Work has been covered which the County has not specifically requested to observe prior to being covered, the County may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the County. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the County or a separate contractor as provided in this Contract, in which event the County shall be responsible for the payment of such costs. The Contractor shall bear the cost of any loss, or damages to the County resulting from such failure or defect.

### **§ 12.2 CORRECTION OF WORK**

**§ 12.2.1** The Contractor shall promptly correct all Work rejected by the County as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the County's additional services made necessary thereby.

**§ 12.2.2** The Contractor certifies that if within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the County of designated equipment or within such longer period of time as may be prescribed by law or by the

terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or requiring excessive service or maintenance or not in accordance with the Contract Documents, the Contractor shall correct it within seven (7) days after receipt of a written notice from the County to do so unless the County has previously given the Contractor a written acceptance of such approval, which written acceptance shall specifically refer to such defect. This obligation shall survive termination of the Contract. The County shall give such notice reasonably promptly after discovery of the condition. The provisions of this paragraph are in addition to, and not in limitation of, the County's other rights and remedies hereunder and in law and equity.

§ 12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected as required by this contract, unless removal is waived by the County in writing.

§ 12.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in by the terms of this contract, the County may correct it in accordance with the terms of this contract.

§ 12.2.5 If the Contractor does not proceed with the correction of defective or non-conforming Work within a reasonable time fixed by written notice from the County, the County may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the County may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the County's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

§ 12.2.6 The Contractor shall bear the cost of making good all work of the County or separate contractors destroyed or damaged by such correction or removal.

§ 12.2.7 Nothing contained in the sections of this contract on Correction of Work shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be forced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligation other than specifically to correct the Work.

### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

§ 12.3.1 If the County prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a

reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

### **ARTICLE 13 LIABILITY, RIGHTS AND REMEDIES**

**13.1 LIMITATION OF LIABILITY** The County shall be liable, if ever, only to the extent of its interest in the Project; and no officer, director, partner, agent or employee of the County shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the County ever succeeds to the Contractor's rights and obligations under a Subcontract.

**§ 13.2 DEFENSE OF SUITS** The Contractor shall be responsible for, and shall defend and pay all costs, attorneys' fees and liabilities, both direct and indirect, as a result of litigation arising out of this Contract.

**§ 13.3 FINAL ACCEPTANCE.** Neither final acceptance nor occupation of the premises by the County shall relieve the Contractor of responsibility for all claims for labor, materials, and equipment arising out of this Contract.

### **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the County or Highway Commissioner shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **ARTICLE 14 TESTS AND INSPECTIONS**

**§14.1 TESTS AND INSPECTIONS.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public **authority** having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the County timely notice of its readiness so the County may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities which are normal and customary for the type of work required by the Contract. Unless otherwise provided, the County shall bear all costs of other inspections, tests or approvals. All testing methods, organizations, and personnel shall be approved by the County before the start of testing Work, without regard to what party will ultimately pay for such Work.

**§ 14.2 FAILURE.** If the County determines that any Work requires special inspection, testing, or approval which other sections of this Contract do not include, it will instruct the Contractor to order such special inspection, testing or approval, give the County timely notice of its readiness so the County may observe such inspection, testing or approval. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the County's additional

services made necessary by such failure; otherwise, the County shall bear such costs, and an appropriate Change Order shall be issued.

**§ 14.3 CERTIFICATES.** Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the County.

**§ 14.4 PERMITS.** The Contractor shall obtain and deliver promptly to the Highway Commissioner and Consultant if any, any occupancy permit and any certificates of final inspection of any part of the Contractor's work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the County. Receipt of such permits or certificates by the Highway Commissioner and Consultant, if any shall be a condition precedent to Substantial Completion of the Work.

**§ 14.5 TIME.** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **ARTICLE 15 - TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 15.1 TERMINATION BY THE CONTRACTOR**

**§ 15.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for the following reasons:

1. Because the Consultant and/or Highway Commissioner or Consultant, if any has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in in this contract, or because the County has not made payment on a Certificate for Payment properly issued within the time stated in the Contract Documents.
2. Because the County has failed to undertake any necessary work in order to prepare the worksite for the project as required.
3. Because the County has not made payment on a Certificate For Payment properly issued within the time stated in the Contract Documents.

**§ 15.1.2** If one the above reason exists, the Contractor may, upon seven additional days written notice to the County, terminate the Contract and recover from the County payment for the Work executed and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. The payment for materials or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to the County to establish the County's title to such material or equipment or otherwise protect the County's interest.

### **§ 15.2 TERMINATION BY THE COUNTY FOR CAUSE**

**§ 15.2.1** The County may without prejudice to any other right or remedy deem this Contract terminated for cause if any of the following defaults shall occur:

:



1. The Contractor has filed a petition, or a petition has been filed against the Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the Contractor without its consent and is not dismissed within sixty (60) days; or if the Contractor is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Contractor or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors;
2. The Contractor refuses or fails, except in cases for which extension of time is provided under this Contract's express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or the Highway Commissioner or Consultant, if any has determined that the rate of progress required for the timely completion of the Work is not being met;
3. The Contractor fails to make prompt payment to Subcontractors or for materials, equipment, or labor;
4. All or a part of the Work has been abandoned;
5. The Contractor has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the County, except as expressly permitted in this Contract;
6. The Contractor has failed to comply with any applicable Laws, regulations or government orders;
7. The Contractor fails to maintain, or provide to the County evidence of the insurance or bonds required by this Contract, or
8. The Contractor has failed to prosecute the Work or any portion thereof to the standards required under this Contract or has otherwise breached any material provision of this Contract.
9. The Contractor has committed a material breach of the Contract.

The Contractor shall have no common law, statutory or other right to cure any of the conditions stated above, including but not limited to any material breach of this contract as a condition precedent to the County exercising its right to terminate this contract, or any other rights under this contract or at law, unless the County, in its sole discretion agrees in writing to allow Contractor to the right to cure.

**§ 15.2.2** The County shall give the Contractor and any surety notice of such termination for cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. In the event of such termination, and without limiting any other available remedies, the County may, at its option:

1. Hold the Contractor and its sureties liable in damages for a breach of Contract;
2. Notify the Contractor to discontinue all work, or any part thereof, and the Contractor shall discontinue all work, or any part thereof, as the County may designate;

3. Complete the Work, or any part thereof, and charge the expense of completing the Work or part thereof, to the Contractor;
4. Require the surety or sureties to complete the Work and perform all of the Contractor's obligations under this Contract.

§ 15.2.3 If the County elects to complete all or any portion of the Work as specified in this Contract, it may take possession of all materials, equipment, tools, machinery, implements at or near the Site owned by the Contractor and finish the Work at the Contractor's expense by whatever means the County may deem expedient; and the Contractor shall cooperate at its expense in the orderly transfer of the same to a new contractor or to the County as directed by the County. In such case the County shall not make any further payments to the Contractor until the Work is completely finished. The County shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the site of the Work after the County has no further use for them. Unless so removed within fifteen days after notice to the Contractor to do so, they may be sold at public auction, and the proceeds credited to the Contractor's account; or they may, at the option of the County, be stored at the Contractor's expense subject to a lien for the storage charges.

§ 15.2.4 Damages and expenses incurred under the sections of this contract addressing Termination for Cause shall include, but not be limited to, costs for the design or extra engineering services and Project Manager services required, in the opinion of the County, to successfully inspect and administer the construction contract through final completion of the Work.

§ 15.2.5 Expenses charged under the sections of this contract addressing Termination for Cause above may be deducted and paid by the County out of any moneys then due or to become due the Contractor under this Contract.

§ 15.2.6 All sums damages, and expenses incurred by the County to complete the Work shall be charged to the Contractor. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference. In case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the County.

### **§ 15.3 TERMINATION BY THE COUNTY FOR NON-APPROPRIATION OR CONVENIENCE**

§ 15.3.1 The County may terminate this Contract due to non-appropriation of funds, or for convenience even though the Contractor is not in default by giving notice to the Contractor specifying in said notice the date of termination.

§ 15.3.2 In the event that the Contract is by County for non-appropriation or convenience, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for materials or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other

evidence as is satisfactory to the County to establish the County's title to such material or equipment or otherwise protect the County's interest. The payment provided in this section shall be considered to fully compensate the Contractor for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.

**§ 15.3.3** Upon termination of this Contract for non-appropriation or convenience the Contractor shall: (1) stop the Work; (2) stop placing orders and Subcontracts in connection with this Contract; (3) cancel all existing orders and Subcontracts; (4) surrender the site to the County in a safe condition; (5) transfer to the County all materials, supplies, work in process, appliances, facilities, equipment and machinery of this Contract, and all plans, Drawings, specifications and other information and documents used in connection with this Contract.

## **ARTICLE 16. - MISCELLANEOUS PROVISIONS**

**§ 16.1 GOVERNING LAW, JURISDICTION AND VENUE.** This contract is to be construed and interpreted in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of laws provision or rule, whether of the State of Wisconsin or any other jurisdiction, that would cause the application of laws of any jurisdiction other than those of the State of Wisconsin. The parties hereby irrevocably submit to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this contract. The parties further agree that the venue for any legal proceedings related to this contract shall be Sauk County, Wisconsin. The foregoing is not intended to be construed to limit the rights of a party to enforce a judgment or order of the above court in any other jurisdictions. Any legal action relating to this contract is to be tried to a court, rather than a jury, and both parties shall take all action necessary to waive any right to have such action tried to a jury.

**§16.2 ASSIGNMENT.** Neither party shall assign any rights or duties under this contract without the prior written consent of the other party

**§16.3 SUCCESSORS AND ASSIGNS.** The County and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the County, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the County.

**§ 16.4 WRITTEN NOTICE** Any notice required by this Contract shall be made in writing to the address specified below:

County:                   Sauk County  
                              Attn: Patrick Gavinski  
                              P.O. Box 26  
                              Baraboo, WI 53913  
                              [Patrick.gavinski@saukcountywi.go](mailto:Patrick.gavinski@saukcountywi.go)

Contractor: (TO BE FILLED IN AT TIME OF SIGNING OF CONTRACT)

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

If the person listed above for notice by either party changes, that party shall give notice to the other party of the new person to whom notice shall be given. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the parties.

**§ 16.5 RIGHTS AND REMEDIES.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 16.6 WAIVER.** No action or failure to act by the County any of its elected officials, employees or agents, or Consultant and/or Project Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**§ 16.7 STANDARD OF CARE.** The same degree of care, skill, and diligence shall be exercised in the performance of all obligations under this contract as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances.

**§16.8 SURVIVAL.** The warranties, representations and covenants of this Contract shall survive completion of the Services under this Contract or any termination of this Contract.

**§16.9 EQUAL EMPLOYMENT OPPORTUNITY.** The CONTRACTOR agrees not to discriminate against or exclude any person from participation herein on grounds of race, religion, color, sex, age or national origin; and that it shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, age, handicapped status, or national origin.

The Contractor hereby affirms its support of affirmative action and that it abides by the provisions of the “Equal Opportunity Clause” of Section 202 of Executive Order 11246 and other applicable laws and regulations. Contractor affirms its policy to recruit and hire employees without regard to race, age, color, religion, sex, sexual preference/orientation, marital status, citizen status, national origin or ancestry, presence of a disability or status as a veteran, including a veteran of the Vietnam era, membership in the national guard or reserve components of the military of the United States, political affiliation, or any other legally protected status. It is Contractor’s policy to treat employees equally with respect to compensation, advancement, promotions, transfers and all other terms and conditions of employment. Contractor further

affirms completion of applicable governmental employer information reports including the EEO-1 and VETS-100 reports, and maintenance of a current Affirmative Action Plan as required by Federal regulations. The Contractor must only comply with this section of the contract if required to do so by applicable law and regulation, including but not limited to Section 201 of executive order 11246.

**§16.10 AMENDMENT.** No amendment of this contract shall be binding unless in writing and signed by all of the parties.

**§16.11 SEVERABILITY.** The invalidity, illegality or unenforceability of any provision of this contract or the occurrence of any event rendering any portion or provision of this contract void shall in no way affect the validity or enforceability of any other portion or provision of this contract or any Task Order. Any void provision shall be deemed severed from this contract and the balance of this contract shall be construed and enforced as if it did not contain the particular portion or provision held to be void. The parties further agree to amend this contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire contract from being void should a provision which is of the essence of this contract be determined void.

**§16.12 NO CONSTRUCTION AGAINST EITHER PARTY.** This Contract is the product of negotiations between the parties and was either reached with the advice of legal counsel or the opportunity to obtain legal counsel and shall not be construed against either party.

**§16.13 MULTIPLE ORIGINALS.** This contract may be executed in multiple originals, each of which, together shall constitute a single Contract.

**§16.14 CAPTIONS.** The parties agree, that in this contract, captions are used for convenience only and shall not be used in interpreting or construing this contract.

**§16.15 NO PARTNERSHIP OR JOINT VENTURE.** This contract shall not in any way be deemed to create a partnership or joint venture between the parties to the Contract.

**§16.16 LEGAL PROTECTIONS.** It is agreed by the parties that nothing in this contract, including but not limited to indemnification and hold harmless clauses, shall in any way constitute a waiver on the part of the County of any immunity, liability limitation or other protection available to the County under any applicable statute or other law. To the extent that any provision of this contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either legal or contractual, provide a greater benefit to the County shall apply unless the County elects otherwise.

**§16.17 COMPLIANCE WITH LAWS.** The parties agree to comply with all applicable Federal, State and local codes, regulations, standards, ordinances, and other laws.

**§16.18 GRATUITIES – KICKBACKS – NON-COLLUSION:**

It shall be a breach of this contract and subsequent amendments for any person to offer, give, or agree to give anything of pecuniary value or to make an offer for employment to any elected

official, employee, or former employee in connection with this contract, or to have given or agreed to have given anything of pecuniary value or to make an offer for employment to any elected official, employee, or former employee in connection with the bidding process which resulted in this contract. Prohibited conduct shall include, but is not limited by enumeration, acts or attempts to influence: any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, the contents of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceedings or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or contract, subcontract, or any solicitation or proposal therefore.

The above prohibitions shall extend, and cover without limitation, any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract, or order.

**§16.19 TIME OF THE ESSENCE.** Except as otherwise specifically stated herein, time is of the essence with respect to all provisions of this contract that specify a time for performance.

**§16.20 CUMULATIVE REMEDIES.** All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other Contract between the parties or otherwise.

**§16.21 SAFETY REQUIREMENTS.** All materials, equipment and supplies provided to the County must fully comply with all safety requirements as set forth by the Wisconsin Department of Commerce and all applicable OSHA standards, and other applicable laws.

**§16.22 ANTI-TRUST ASSIGNMENT.** The contractor and County recognize that in actual economic practice, overcharges resulting from antitrust violation are in fact usually borne by purchaser under a contract such as this, which is County. Therefore, Contractor hereby assigns to County any and all claims for such overcharges as to goods, materials or services purchased in connection with this contract.

**§ 16.23 OPEN RECORDS LAW COMPLIANCE.** \_\_\_\_\_ understands and agrees that, because \_\_\_\_\_ is a party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by \_\_\_\_\_. \_\_\_\_\_ agree to fully comply with such laws, and to cooperate with County in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records to County or others upon the request of county. Compliance and cooperation of \_\_\_\_\_ shall be at its sole cost and expense.

**§16.24 RECORDKEEPING AND RECORD RETENTION - PUBLIC WORKS CONTRACTS.** Contractor on a public works contract shall establish and maintain adequate payroll records for expenditures relating to all subcontracts, material men and suppliers. All records shall be kept in accordance with generally accepted accounting procedures. The County shall have the right to audit, review, examine, copy, and transcribe any such records or

documents. The vendor shall retain all documents applicable to the contract for a period of not less than three (3) years after final payment is made. In the event its payroll records contain any false, misleading or fraudulent information, or if the vendor fails to comply with the provisions of s. 25.015, D.C. Ords., the County may withhold payments on the contract, terminate, cancel or suspend the contract in whole or in part, or, after a due process hearing, deny the vendor the right to participate in bidding on future County contracts for a period of one (1) year after the first violation is found and for a period of three (3) years after a second violation is found.

**SECTION 00600**

**NOTICE TO PROCEED**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Project: \_\_\_\_\_  
SAUK COUNTY, WI

You are hereby notified to commence Work in accordance with the Contract dated \_\_\_\_\_, 20\_\_ on or before \_\_\_\_\_, 20\_\_ and to have fully completed the Work by the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, but a contract extension shall be at the discretion of the Highway Commissioner.

Highway Department  
Sauk County, Wisconsin

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO

PROCEED is hereby acknowledged

By: \_\_\_\_\_

this the day \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_





**SECTION 00700**

**CHANGE ORDER FORM**

Page 1 of 2

Project Number \_\_\_\_\_

Change Order Number \_\_\_\_\_

Contract Amount (As Bid) .....\$ \_\_\_\_\_

Net Change in Contract Price (this Change Order) .....\$ \_\_\_\_\_

Net Change in Contract Price (all other Change Orders) .....\$ \_\_\_\_\_

Total Adjusted Contract Price.....\$ \_\_\_\_\_

This Change Order extends the time to complete the Work by \_\_\_\_\_ calendar days.

The extended completion date is \_\_\_\_\_.

This Change Order checked by: \_\_\_\_\_.

This Change Order is requested by: \_\_\_\_\_.

This Change Order is recommended by \_\_\_\_\_.

\_\_\_\_\_  
Contractor Date

The undersigned agree to the terms of the Change Order and certifies that such Change Order is approved.

\_\_\_\_\_  
Contractor Date

\_\_\_\_\_  
Owner Date

Certification of Appropriation: Adequate funding in an amount sufficient to cover the total cost of this Change Order is available.

By: \_\_\_\_\_

\_\_\_\_\_  
Certification Officer Date

CHANGE ORDER FORM

Page 2 of 2

Change Order Number \_\_\_\_\_

Contract Title: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Owner's Address: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Contractor's Address: \_\_\_\_\_

Description of Change

Reason for Change

**SECTION 00800**

CERTIFICATE OF FINAL COMPLETION OF WORK

CONTRACT NO. \_\_\_\_\_ CONTRACT DATE: \_\_\_\_\_

CONTRACT TITLE:

COMPLETION DATE PER CONTRACT AND CHANGE ORDERS \_\_\_\_\_

FINAL CERTIFICATION OF CONTRACTOR

I hereby certify that the Work as identified in the Final Payment Request for construction Contract Work dated \_\_\_\_\_, represents full compensation for the actual value of Work completed. All Work completed conforms to the terms of the Contract and authorized changes.

\_\_\_\_\_  
Date

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

FINAL CERTIFICATION OF HIGHWAY COMMISSIONER

I have reviewed the CONTRACTOR'S Final Payment Request dated \_\_\_\_\_ and hereby certify that to the best of my knowledge, the cost of the Work identified on the Final Estimate represents full compensation for the actual value of Work completed and that the Work has been completed in accordance with the terms of the Contract and authorized changes. This certification is provided in accord with the terms of the General Conditions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Highway Commissioner.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

FINAL ACCEPTANCE OF OWNER

I, as representative of the OWNER, accept the above Final Certifications and authorize Final Payment in the amount of \$ \_\_\_\_\_ and direct the Contractor's attention to the General Conditions. The guaranty for all Work completed subsequent to the date of Substantial Completion, expires one (1) year from the date of this Final Acceptance.

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

HIGHWAY DEPARTMENT  
SAUK COUNTY, WISCONSIN

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Signature

END OF SECTION

**ATTACHMENT A**

**SCOPE OF WORK**

**2023**  
**SAUK COUNTY HIGHWAY DEPARTMENT**

**SCOPE OF WORK FOR**

**C.T.H. PF**  
**CTH W TO STH 12**

**SEAL COAT PROJECT**

**SAUK COUNTY HIGHWAY DEPARTMENT**  
**P.O. BOX 26**  
**BARABOO, WI 53913**

**PHONE: (608) 355-4855**  
**FAX: (608) 355-4398**

**Patrick J. Gavinski, HIGHWAY COMMISSIONER**

## **SEAL COAT CONSTRUCTION**

### **A. DESCRIPTION:**

This Project shall consist of the construction of Seal Coat surfaces shall conform to Section 475 of the State of Wisconsin Department of Transportation Standard Specifications for Road and Bridge Construction, 2023 Edition. Furnish asphaltic materials for seal coat conforming to Section 455 of the state specifications and the aggregates to be used for base, binder and surface course shall conform to the gradation requirements in 460.



## **SECTION 1 – SEAL COAT**

### **Seal Coat**

#### **A. Description**

- (1) This section describes applying asphaltic material, aggregate cover, and fog seal on a previously completed asphalt surface.

#### **B. Materials**

##### **B.1 Asphaltic Material**

- (1) Furnish asphaltic materials for seal coats and fog seals conforming to section 455 of the standard specifications.
- (2) Provide CRS-2P or HFRS-2P, asphaltic material for seal coat. Provide CRS-2P or HFRS-2P, asphaltic material for fog seal when fog seal is applied in conjunction with seal coat. The CRS-2P and HFRS-2P, asphaltic material for seal coat, and for fog sealing, shall meet the following requirements for the type and grade specified. Only Asphaltic Material supplied from a certified source is approved for use.
- (3) The asphalt emulsion shall be compatible with the cover aggregate. Provide the supplier of the asphalt emulsion test results from the aggregate sample. The supplier of the emulsion will provide a certification that the emulsion is compatible with the aggregate.
- (4) The emulsified asphalt shall meet the requirements of AASHTO M-316 subject to the following modification:
  - a) Polymer-modified cationic emulsified asphalt, (CRS-2P), and polymer-modified anionic emulsified asphalt, (HFRS-2P) shall be produced by using polymer modified base asphalt only. The use of Latex modification shall not be allowed. Any emulsion not meeting this requirement shall not be used.

##### **B.2 Aggregate**

- (1) Provide aggregate conforming to section 475 of the standard specifications. Use aggregates, uniform in quality and free from wood, bark, roots, and other deleterious materials. Furnish aggregate conforming to the following table:

**Table 5-1**

Sieve Size	Percent Passing By Weight		
	#1	#2	#3
3/8 inch (9.5mm)	100	100	100
#4 (4.75mm)	90-100	90-100	85-100
#8 (2.36mm)	45-75	5-10	10-40
#16 (1.19mm)	-	-	0-10
#40 (.425mm)	0-8	-	-
#200 (.075mm)	0-2	0-1	0-1

- (2) At least two weeks before construction provide aggregate gradation to the engineer for review
- (3) The engineer may take a sample of the aggregate and re-test the gradation of the cover aggregate during seal coat operations.

**B.3 Water**

Use potable water, compatible with the seal coat.

**B.4 Seal Coat Design**

- (1) Provide the following to the engineer at least two weeks before beginning construction:
  - a) Seal coat aggregate design application rate (Lbs/SY),
  - b) Asphalt emulsion design application rate (Gal/SY), and
  - c) Source(s) of aggregate and asphalt emulsion.
- (2) The department may postpone the start of work until receipt of the seal coat design and approval by the engineer.
- (3) If the aggregate material specified in Table 1 is unavailable or is cost prohibitive to obtain, the Contractor may submit a proposed seal coat design prior to providing a quote. The proposed design should include a listing of projects and roadways where the seal coat design has been utilized within the last four years. The proposed alternative design will be reviewed by the engineer.

## **C. Construction**

### **C.1 General**

- (1) Schedule a meeting at least seven calendar days before beginning seal coat operations. The purpose of the meeting will be to discuss the seal coat operations, equipment, material sources, traffic control, and staffing for the project. Coordinate the time and location with the County's engineer.
- (2) Construct seal coat to the full width of the existing surface unless the contract or engineer specify otherwise.

### **C.2 Equipment**

- (1) Distributor: use a distributor as specified in section 455.3.2.2 of the standard specifications.
- (2) Aggregate Spreader: Use a self-propelled mechanical type aggregate spreader capable of distributing the aggregate uniformly to the required width and at the designed rate. Use a self-propelled type mounted on pneumatic-tired wheels.
- (3) Rollers: Provide a minimum of two self-propelled rollers. At least one roller will be a pneumatic-tire roller. Steel-wheel rollers must weigh between 6 and 9 tons. The compaction width of the rollers shall be of sufficient width so that the entire width of the treatment area is covered in one pass by all the rollers.
- (4) Brooms: Provide motorized brooms with a positive means of controlling vertical pressure and capable of cleaning the road surface prior to spraying asphaltic material and removing loose aggregate after seal coating.

### **C.3 Weather Limitations**

Construct seal coat operations in accordance with the following:

- a) Not before May 1 or after August 31,
- b) Work only during daylight hours,
- c) Start when the pavement and air temperature are 60°F and rising,
- d) The road surface is dry and there shall be no standing water,
- e) Do not apply before impending rains if rain will damage the material before placing and rolling the cover aggregates, and
- f) Do not perform work during foggy weather.

#### **C.4 Road Surface Preparation**

- (1) Immediately before applying the asphaltic material, clean the pavement surface with a power broom to remove dirt, clay or other objectionable matter. Clean depressions not reached by the power broom, using hand brooming.
- (2) Remove vegetation from cracks or joints.
- (3) Cover iron fixtures in or near the pavement to prevent adherence of the asphaltic material. Suitable covering includes plywood disks, sand, Kraft paper, roofing felt or other approved methods. Remove the protective coverings before opening the road to traffic.
- (4) Remove protective covers from the reflective tabs prior to opening the closed lane(s) to traffic.

#### **C.5 Traffic Control**

For roadways with annual daily traffic (ADT) less than 3,500 vehicles per day (vpd), use of pilot vehicles to lead traffic through the work zone shall be optional. Use of pilot vehicles shall be required on roadways with ADT greater than or equal to 3,500 vpd.

### **C.6 Application of Asphaltic Material**

Begin the rate of application for the asphaltic material as determined by the seal design. After sealing 200 feet of the road segment, pause sealing operations to ensure the application rate of the asphaltic material is adequate given the field conditions. After applying the asphaltic material to 200-foot segment, place the seal coat aggregate at the design application rate. Inspect the aggregate in the wheel paths for proper embedment. Make adjustments to the rate of application, if necessary. At a minimum, construct one full lane width at a time. Make additional adjustments to the rate of application during the project if needed.

### **C.7 Application of Aggregate**

- (1) Apply the aggregates at the rate identified in the seal design.
- (2) Place aggregate within minutes of applying the asphaltic material. Make additional adjustments to the rate of application during the project if needed.
- (3) The speed of the spreader shall be such that the aggregate does not turn over, and starting and stopping of the spreader is minimized. The edges of the aggregate applications shall be sharply defined. Do not use previously applied aggregates.

### **C.8 Rolling Operations**

- (1) Roll the surface immediately after spreading the aggregate. Begin at the edges and continue to the center, lapping  $\frac{1}{2}$  the roller width on each pass. Roll the aggregate so the entire width of the treatment area is covered in one pass by all the rollers. After this initial rolling, perform subsequent rolling using both steel wheel rollers and pneumatic-tire rollers until thoroughly embedding the aggregate and the surface is smooth and uniform in texture. Take care when reversing the roller direction to avoid displacing or loosening the cover aggregate, or damaging the asphaltic material.
- (2) Proceed at a recommended speed less than or equal to 5 miles per hour (7 feet per second), to prevent turning over aggregate.
- (3) Make at least three complete passes over the aggregate. Roll the aggregate so the entire width of the treatment area is covered in one pass by all the rollers.
- (4) Self-propelled pneumatic tired compacting equipment must have a compaction width of at least five feet.

### **C.9 Sweeping**

- (1) A light brooming of the seal coat should occur before vehicular traffic is allowed on the surface. No downward pressure should be exerted on the broom during the initial

sweeping. Care should be taken not to dislodge the cover aggregate from the emulsion during the initial sweeping.

- (2) Re-sweep seal coat areas the day after the initial sweeping. Dispose of the surplus seal coat aggregate in a manner satisfactory to the engineer.

**C.10 Protection of the Surface**

No traffic is permitted on the seal coat until after the initial rolling has been completed and the asphaltic material has set and will not pick up on vehicle tires.

**D. Measurement**

- (1) The County will measure Seal Coat-Installation by the square yard acceptably completed.
- (2) The County will measure Seal Coat-Asphaltic Material by the gallon acceptably completed.
- (3) The County will measure Seal Coat-Aggregate Material by the square yard acceptably completed.

**E. Payment**

(1) The County will pay for measured quantities at the unit price under the following work items:

ITEM NUMBER	DESCRIPTION	UNIT
1	Seal Coat-Installation	SY
2	Seal Coat-Asphaltic Material for Seal Coat	GAL
3	Seal Coat-Aggregate Material	SY

(2) Payment for Seal Coat-Installation and Seal Coat-Aggregate Material is full compensation for preparing the surface; for heating and applying asphaltic material; for drying or moistening, applying, and rolling the cover aggregate; and for brooming, finishing and maintaining the surface.

(3) Payment for Seal Coat-Asphaltic Material bid items is full compensation for providing the asphaltic material; and for transporting and heating.

## SECTION 2 MOBILIZATION

### A. Description

This section describes the work and operations necessary to move personnel, equipment, supplies, and incidentals to the project site.

### B. Materials (Vacant)

### C. Construction (Vacant)

### D. Measurement

The County will measure Mobilization as one each for each segment identified and acceptably completed. Mobilization for segments deleted from the agreement will not be paid.

### E. Payment

- <sup>(1)</sup> The County will pay for measured quantities at the unit price under the following item:

ITEM NUMBER	DESCRIPTION	UNIT
4	Mobilization	EACH

- <sup>(2)</sup> Payment for Mobilization is full compensation for all work necessary to move personnel, equipment, supplies and incidentals to the project site.



## **SECTION 3 TRAFFIC CONTROL**

### **A. Description**

This section describes providing flagging and erecting, maintaining, moving, and removing temporary traffic signs, and demountable legend plaques, pavement markings, drums, barricades, flexible tubular markers, arrow boards, portable changeable message signs (PCMS), and lights.

### **B. Materials**

#### **B.1 General**

- (1) Furnish materials conforming to the Manual on Uniform Traffic Control Devices (MUTCD) including the Wisconsin supplement (WMUTCD) and meeting the criteria for acceptable devices according to the ATSSA publication Quality Guidelines for Temporary Traffic Control Devices, and section 643.2 of the standard specifications.
- (2) Use reflective sheeting from the department's approved products list on barricades, drums, and flexible tubular marker posts. For projects on the interstate, US, or state highways, the county may use sheeting conforming to ASTM D4956, type III or type IV.

### **C. Construction**

- (1) Perform this work according to Part VI of the MUTCD, WMUTCD and section 643.3 of the standard specifications. The Guidelines for Construction, Maintenance and Utility Operations flip book is an abbreviated version of Part VI of the MUTCD and it provides a good reference for Performance Based Maintenance work.
- (2) Install or relocate PCMS units at locations the engineer directs. Ensure that the PCMS is level and operating satisfactorily before activating. Maintain the PCMS in good working condition. Repair damaged or malfunctioning PCMS units within two hours after discovering a problem. Remove the PCMS from the project when no longer needed.
- (3) If the onboard computer cannot be programmed remotely, provide the proposed message(s) to the engineer two weeks before deploying the message. The region's traffic section will review the proposed message and either approve the message or make necessary changes.

**D. Measurement**

- (1) The County will measure Mobilization as one each for each segment identified and acceptably completed. Mobilization for segments deleted from the agreement will not be paid.
- (2) Payment for Mobilization is full compensation for all work necessary to move personnel, equipment, supplies and incidentals to the project site.

**E. Payment**

- (1) The department will pay for measured quantities at the unit price under the following work items:

ITEM NUMBER	DESCRIPTION	UNIT
5	Traffic Control	EACH

- (2) Payment for the Traffic Control items is full compensation for providing flagging; constructing, assembling, painting, hauling, erecting, re-erecting, maintaining, restoring, and removing traffic signs, drums, barricades, and similar control devices, including arrow boards and portable changeable message signs (PCMS), unless provided otherwise; for partially or fully covering or uncovering signs; for providing, placing, and maintaining lights, including the fuel or power unless provided otherwise; and for providing, applying, and removing pavement markings, unless provided otherwise. If Traffic Control is not specified, but is later found necessary and is required, the department will pay for this work as extra work.