

1 AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN

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AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_

1
2 **T**HIS AGREEMENT IS ENTERED INTO BY AND BETWEEN KENOSHA COUNTY, WISCONSIN, A QUASI
3 MUNICIPAL CORPORATION CREATED PURSUANT TO WISCONSIN STATUTES § 2.01(30) AND
4 AUTHORIZED TO ENTER INTO CONTRACTS PURSUANT TO WISCONSIN STATUTES § 59.01 AND WITH
5 ITS PRINCIPAL PLACE OF BUSINESS LOCATED AT 1010 - 56TH STREET, KENOSHA, WISCONSIN
6 53140, HEREINAFTER REFERRED TO AS “COUNTY” AND [HERE NAME THE OTHER PARTY OR PARTIES, IDENTIFY THEIR
7 LEGAL STATUS, EG., A CORPORATION LICENSED TO DO BUSINESS IN WISCONSIN, THEIR LOCATION AND REFERENCED NAME IN THE AGREEMENT]
8
9

10
11 **RECITALS**

12 A SERIES OF “WHEREAS” CLAUSES THAT SETS FORTH THE INTENT AND REASONS FOR THE
13 AGREEMENT AND ANY ASSUMPTIONS THAT ARE RELIED UPON SUCH AS THE EXPERTISE OF A PARTY
14 AND THE RELIANCE OF THE COUNTY ON SUCH EXPERTISE OR A CLAUSE THAT SETS FORTH THE ABILITY
15 OF A PARTY TO PROVIDE SERVICES OR THEIR REPRESENTATION TO THAT EFFECT AND OR AS TO A SET
16 PERFORMANCE STANDARD. INCORPORATION BY REFERENCE AS IF FULLY SET FORTH WITHIN THE
17 AGREEMENT OF OTHER DOCUMENTS SUCH AS THE RETURN OF THE REQUEST FOR PROPOSALS OR BID
18 DOCUMENTS.
19

20
21 **Whereas,**
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4 **W**ITNESSETH: IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS AND
5 OBLIGATIONS SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE
6 RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS
7 FOLLOWS:
8

9
10 **1.01 DEFINITIONS**

11 WORDS IN A CONTRACT, UNLESS OTHERWISE SO SPECIFIED OR HAVE A TECHNICAL MEANING ARE
12 GENERALLY GIVEN THEIR COMMON, ORDINARY, DICTIONARY MEANING. HERE LIST AND DEFINE IN
13 ALPHABETICAL ORDER THOSE WORDS WHICH HAVE A SPECIAL OR TECHNICAL MEANING.
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2 **2.01 TERM OF THE AGREEMENT AND TERMINATION**
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4 **(1) TERM**

5
6 EXCEPT AS MAY HEREINAFTER BE SET FORTH WITH RESPECT TO PROVISIONS WITHIN THIS AGREEMENT THAT
7 MAY EXTEND BEYOND ITS TERM, THE TERM OF THIS AGREEMENT SHALL BE FROM _____
8 TO _____
9

10 **(2) TIME IS OF THE ESSENCE [Strike if not applicable]**

11
12 IN FULFILLING THE TERMS AND CONDITIONS OF THIS AGREEMENT, TIME IS OF THE ESSENCE. FAILURE
13 TO MEET A TIME FRAME OR DEADLINE MAY RESULT IN VOIDANCE OF THE CONTRACT, GROUNDS FOR
14 TERMINATION OR BREACH AND MAY TRIGGER PENALTIES OR DAMAGES
15

16
17 **2.02 OPTION TO RENEW**

18
19 THE _____ (NAME OF PARTY OR PARTIES) SHALL HAVE THE
20 OPTION TO RENEW THIS AGREEMENT FOR AN ADDITIONAL TERM OF _____, ENDING AT
21 12:01AM ON _____ UNDER THE SAME TERMS AS THIS AGREEMENT OR ITS
22 MODIFICATION OR REVISION, WITH THE EXCEPTION OF THIS SECTION AND AS HEREINAFTER PROVIDED.
23

24 THE EXERCISE OF THE OPTION TO RENEW IS SUBJECT, HOWEVER, TO THE FOLLOWING MODIFICATIONS IN
25 CONSIDERATION AND MODIFICATION OF INSURANCE COVERAGE:
26

27 CONSIDERATION: _____
28 _____
29 _____
30

31 INSURANCE: _____
32 _____
33 _____
34

35 THIS PROVISION IS VIABLE ONLY IN THE EVENT THAT THE PARTY EXERCISING ITS OPTION TO RENEW HAS GIVEN
36 THE OTHER PARTY WRITTEN NOTICE OF ITS INTENT TO EXERCISE THIS OPTION NO LATER THAN 12:01AM ON
37 _____.
38

39 **2.03 TERMINATION [CHOOSE 1 OR THE FOLLOWING 3 PROVISIONS]**

40
41 **(1) TERMINATION FOR CAUSE**

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A PARTY BREACHING THE TERMS OF THIS AGREEMENT SHALL BE GIVEN _____ (____) DAYS WRITTEN NOTICE OF SUCH NONCOMPLIANCE. IF THE NONCOMPLIANT PARTY FAILS TO CORRECT SUCH NONCOMPLIANCE WITHIN THE STATED PERIOD THE OTHER PARTY MAY TERMINATE THIS AGREEMENT AT ANY TIME UPON GIVING THE NONCOMPLIANT PARTY AN ADDITIONAL _____ (____) DAYS PRIOR WRITTEN NOTICE OF THE INTENT TO TERMINATE.

IN THE EVENT OF SUCH TERMINATION THE NON-COMPLIANT PARTY SHALL BE RESPONSIBLE FOR ALL DAMAGES AND COSTS CAUSED BY SUCH NON-COMPLIANCE.

(2) TERMINATION WITHOUT CAUSE

EITHER PARTY MAY TERMINATE THIS AGREEMENT WITHOUT CAUSE BY GIVING TO THE OTHER PARTY IN ACCORDANCE WITH THE "NOTICE" PROVISIONS OF THIS AGREEMENT _____ (____) DAYS NOTICE OF THE INTENT TO TERMINATE.

(3) NO TERMINATION – SPECIFIC PERFORMANCE

NO BREACH OR VIOLATION OF ANY OF THE TERMS OF THIS AGREEMENT BY EITHER PARTY SHALL OPERATE TO VOID OR TERMINATE OR PROVIDE GROUNDS FOR TERMINATION OF THIS AGREEMENT, IT BEING THE INTENT OF THE PARTIES THAT THE PROVISIONS OF THIS AGREEMENT SHALL BE SUBJECT TO SPECIFIC PERFORMANCE, AND INJUNCTIVE RELIEF SHALL BE PROVIDED TO CURE ANY BREACHES PROSPECTIVELY, AND THAT DAMAGES SHALL BE AWARDED TO REDRESS ANY HARM OCCASIONED BY A BREACH.

3.01 CONSIDERATION

(1) CONSIDERATION

_____.

(2) LATE PAYMENT

IN THE EVENT THAT A PARTY OBLIGATED TO MAKE ANY PAYMENT UNDER THE TERMS OF THIS AGREEMENT FAILS TO MAKE SUCH PAYMENTS AS REQUIRED HEREIN AND IN A TIMELY FASHION, THE DEFAULTING PARTY SHALL PAY THE PARTY TO WHOM THE PAYMENT IS OWNED INTEREST AT THE RATE OF 1.5% PER MONTH COMPOUNDED ON ANY AMOUNT THAT IS DELINQUENT COMMENCING WITH THE DATE THE PAYMENT BECAME DELINQUENT.

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4.01 OBLIGATIONS

- (1) OBLIGATIONS OF THE PARTIES
- (2) CONDITIONS
- (3) CONTINGENCY CLAUSE
- (4) EMERGENCIES

5.01 RISK MANAGEMENT

6.01 DISPUTE RESOLUTION

7.01 GENERAL PROVISIONS

7.01-1 LAWS OF WISCONSIN

THIS AGREEMENT SHALL BE CONSTRUED, ENFORCED AND GOVERNED IN ALL RESPECTS, IN ACCORDANCE WITH THE LAWS AND STATUTES OF THE UNITED STATES OF AMERICA AND THE STATE OF WISCONSIN AND AS THEY MAY BE AMENDED FROM TIME TO TIME.

7.01-2 ADVISE OF COUNSEL

BY EXECUTION OF THIS AGREEMENT EACH PARTY CERTIFIES THAT THEY HAVE HAD THE BENEFIT OF THE ADVISE OF LEGAL COUNSEL OR THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL PRIOR TO EXECUTION.

7.01-3 CONSENT TO JURISDICTION AND SERVICE OF PROCESS

IN THE EVENT OF RESOLVING A DISPUTE ARISING FROM THIS AGREEMENT IN A COURT OF LAW OR EQUITY, EACH PARTY CONSENTS TO LITIGATE ANY CAUSE OF ACTION ARISING OUT OF THE EXECUTION OF THIS AGREEMENT, WHETHER IN CONTRACT OR TORT in State Circuit Court in and for Kenosha County and all related State appellate courts, or, when so required, in the United States District Court for the Eastern District of Wisconsin and all related federal appellate courts. No party to this Agreement shall contest jurisdiction or venue of the above-referenced courts for any dispute or claim arising

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1 **under this Agreement.**

2
3 IT IS AGREED THAT THE AUTHORIZED AGENTS LISTED HEREIN FOR EACH PARTY MAY ACCEPT SERVICE OF
4 PROCESS AND THAT A COPY OF SUCH PROCESS SHALL BE PROVIDED TO EACH PARTY'S LEGAL COUNSEL AS
5 NOTED HEREIN.

6
7 **7.01-4 No Waiver of Municipal or Statutory Immunity, Right to Notice of**
8 **Claim , Liability Limits or Exhaustion of Administrative Remedies.**

9
10 NO PROVISION OF THIS AGREEMENT SHALL BE INTERPRETED TO MEAN OR SUGGEST THAT KENOSHA COUNTY
11 HAS WAIVED ANY IMMUNITY, NOTICE OF CLAIM, OR LIABILITY LIMIT PROVIDED OR ALLOWED FOR BY LAW NOR
12 ANY DEFENSE, INCLUDING BUT NOT LIMITED TO EXHAUSTION OF REMEDIES.

13
14 **7.01-5 Compliance – Federal, State and Local Laws and Regulations**

15
16 IN FURTHERANCE OF THIS AGREEMENT, THE PARTIES AGREE TO COMPLY WITH ALL FEDERAL AND STATE LAWS
17 AND REGULATIONS AND STANDARDS AND ALL APPLICABLE LOCAL ORDINANCES AND REGULATIONS AS MAY
18 BE REQUIRED FROM TIME TO TIME.

19
20 **7.01-6 Compliance – Ethics Code, Open Meeting and Public Records Laws**

21 THE PARTIES ACKNOWLEDGE THAT KENOSHA COUNTY IS A MUNICIPAL CORPORATION LEGALLY BOUND TO
22 COMPLY WITH THE WISCONSIN OPEN MEETINGS AND PUBLIC RECORDS LAW AND THAT AS SUCH, UNLESS
23 OTHERWISE ALLOWED FOR BY LAW, ALL ASPECTS OF THIS AGREEMENT ARE SUBJECT TO OPEN DISCUSSION
24 AND ARE A MATTER OF PUBLIC RECORD. IT IS FURTHERMORE AGREED TO THAT NO PARTY WILL TAKE ANY
25 ACTION TO OBSTRUCT THE OPERATION OF THESE LAWS. IF RECORDS ARE CREATED OR MAINTAINED OR IN THE
26 CUSTODY OF THE PROVIDER, AS AN INDEPENDENT CONTRACTOR, THEY, ALONG WITH THE RAW DATA USED TO
27 CREATE THE RECORD, ARE, NEVERTHELESS, PUBLIC RECORDS THAT MUST BE MADE IMMEDIATELY AVAILABLE
28 TO THE PUBLIC UPON REQUEST AND IN THE FORMAT IN WHICH THEY WERE CREATED. PROVIDER AGREES TO
29 HOLD THE COUNTY HARMLESS AND TO INDEMNIFY THE COUNTY FOR ALL COSTS, FEES, INCLUDING ALL
30 ATTORNEY FEES AND JUDGMENTS AND DAMAGES OF WHATEVER KIND FOR WHICH THE COUNTY MAY BE HELD
31 LIABLE DUE TO THE PROVIDER'S FAILURE TO COMPLY WITH THE WISCONSIN PUBLIC RECORDS AND OPEN
32 MEETINGS LAWS, OR THIS AGREEMENT..

33
34
35
36 IT IS FURTHER ACKNOWLEDGED THAT KENOSHA COUNTY OFFICIALS ARE BOUND BY EITHER OR BOTH THE
37 STATE OF WISCONSIN ETHICS CODE AND/OR THE KENOSHA COUNTY ETHICS POLICY. FURTHERMORE, IN THE
38 EVENT THAT ANY PARTY OR ANY AGENT OF ANY PARTY ACTS IN CONCERT WITH A KENOSHA COUNTY OFFICIAL,
39 INCLUDING ELECTED OFFICIALS, OR COUNTY EMPLOYEE IN SUCH A MANNER AS TO VIOLATE ANY SUCH ETHICS
40 PROVISION THIS AGREEMENT MAY, AT THE OPTION OF KENOSHA COUNTY, BE DECLARED NULL AND VOID.

41
42 **7.01-7 Compliance - Anti-Trust**

43
44 THOSE PARTIES CONTRACTING WITH THE COUNTY CERTIFY THAT WITH RESPECT TO ALL ASPECTS OF THIS
45 AGREEMENT THEY HAVE COMPLIED AND WILL COMPLY WITH ALL FEDERAL AND STATE ANTI-TRUST AND
46 RESTRAINT OF TRADE LAWS AND REGULATIONS. FURTHERMORE SAID PARTY AGREES TO DEFEND AND HOLD

AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_

1 THE COUNTY HARMLESS AGAINST ANY CLAIMS TO THE CONTRARY.

2
3 **7.01-8 COMPLIANCE – NON - DISCRIMINATION**

4
5 BY EXECUTING THIS AGREEMENT THE PARTIES CERTIFY THAT WITH RESPECT TO ALL ASPECTS OF THIS
6 AGREEMENT EACH PARTY HAS COMPLIED AND WILL COMPLY WITH ALL FEDERAL, STATE, AND LOCAL LAWS
7 PRECLUDING DISCRIMINATION.

8
9 **7.01-9 CONFLICT OF INTEREST**

10
11 THE PROVIDER SHALL ENSURE THE ESTABLISHMENT OF WRITTEN POLICIES AND EMPLOYMENT RULES AND
12 OTHER SAFEGUARDS TO PREVENT, AND SHALL PREVENT, ITS EMPLOYEES, CONSULTANTS, OR AGENTS FROM
13 ATTEMPTING TO INFLUENCE KENOSHA COUNTY OFFICIALS, EMPLOYEES, OR ITS VARIOUS COMMITTEES,
14 COMMISSIONS, WORKGROUPS, DEPARTMENTS, AUTHORITIES, CENTERS, SERVICES, CONSULTANTS, AGENTS,
15 OR MEMBERS OF THE KENOSHA COUNTY BOARD OF SUPERVISORS, FROM USING THEIR PUBLIC POSITIONS
16 FOR PURPOSES THAT ARE, OR GIVE THE APPEARANCE OF BEING, MOTIVATED BY A DESIRE FOR PRIVATE GAIN
17 FOR THEMSELVES OR OTHERS WITH WHOM THEY HAVE FAMILY, BUSINESS, OR OTHER TIES. [SEE WIS. STAT.
18 EC. 946.12]

19
20 IT IS ACKNOWLEDGED THAT IT IS A CRIME UNDER SEC. 946.13 WIS. STATS., IF ANY PUBLIC OFFICIAL OR
21 EMPLOYEE SHALL, IN HIS OR HER PRIVATE CAPACITY, NEGOTIATE OR BID FOR OR ENTER INTO A CONTRACT IN
22 WHICH HE OR SHE HAS A PRIVATE PECUNIARY INTEREST, DIRECT OR INDIRECT, IF AT THE SAME TIME HE OR
23 SHE IS AUTHORIZED OR REQUIRED BY LAW TO PARTICIPATE IN HIS OR HER CAPACITY AS SUCH OFFICER OR
24 EMPLOYEE IN THE MAKING OF THAT CONTRACT OR TO PERFORM IN REGARD TO THAT CONTRACT SOME
25 OFFICIAL FUNCTION REQUIRING THE EXERCISE OF DISCRETION ON HIS OR HER PART, NOR SHALL ANY OFFICIAL
26 OR EMPLOYEE, IN HIS OFFICIAL CAPACITY, PARTICIPATE IN THE MAKING OF A CONTRACT IN WHICH HE OR SHE
27 HAS A PRIVATE PECUNIARY INTEREST, DIRECT OR INDIRECT, OR PERFORMS IN REGARD TO THAT CONTRACT
28 SOME FUNCTION REQUIRING THE EXERCISE OF DISCRETION ON HIS OR HER PART.

29
30 IN THE EVENT WIS. STAT, SECS. 946.12 AND 946.13 ARE VIOLATED, IT IS UNDERSTOOD THAT THIS CONTRACT
31 MAY BE VOIDED AT THE DISCRETION OF KENOSHA COUNTY.

32
33 **7.01-10 GOOD FAITH and Fair Dealing**

34
35 THE PARTIES TO THIS AGREEMENT AGREE THAT THIS AGREEMENT IMPOSES ON THEM A DUTY OF GOOD FAITH
36 AND FAIR DEALING.

37
38 **7.01-11 NOTHING TO IMPAIR**

39
40 NEITHER PARTY SHALL ACT SO AS TO IMPAIR THE OBLIGATIONS OF THIS AGREEMENT WITHOUT THE WRITTEN
41 CONSENT OF THE OTHER PARTY.

42
43 **7.01-12 ASSURANCE**

44
45 THE PARTIES AGREE TO EXECUTE, ACKNOWLEDGE AND DELIVER SUCH OTHER INSTRUMENTS AS REQUIRED

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

OR AS REASONABLY MAY BE REQUIRED AND REQUESTED TO EFFECTUATE THE INTENT, TERMS AND CONDITIONS OF THIS AGREEMENT.

7.01-13 FORCE MAJEURE

IN THE EVENT THAT ANY PARTY HERETO IS DELAYED OR HINDERED IN OR PREVENTED FROM THE PERFORMANCE OF ANY ACT REQUIRED UNDER THIS AGREEMENT BY REASON OF STRIKES, LOCK-OUTS, LABOR TROUBLES, INABILITY TO PROCURE MATERIALS, FAILURE OF POWER, GOVERNMENTAL MORATORIUM OR OTHER GOVERNMENTAL ACTION OR INACTION BY ANY GOVERNMENTAL ENTITY OTHER THAN THE PARTIES TO THIS AGREEMENT (INCLUDING FAILURE, REFUSAL OR DELAY IN ISSUING PERMITS, APPROVALS AND/OR AUTHORIZATIONS) INJUNCTION OR COURT ORDER, RIOTS, INSURRECTION, WAR, FIRE, EARTHQUAKE, FLOOD OR OTHER NATURAL DISASTER OR OTHER REASON OF A LIKE NATURE NOT THE FAULT OF THE PARTY DELAYING IN PERFORMING WORK OR DOING ACTS REQUIRED UNDER THIS AGREEMENT (BUT EXCLUDING DELAYS DUE TO FINANCIAL INABILITY), THEN PERFORMANCE OF SUCH ACT SHALL BE EXCUSED FOR THE PERIOD OF THE DELAY AND THE PERIOD FOR THE PERFORMANCE OF ANY SUCH ACT SHALL BE EXTENDED FOR A PERIOD EQUIVALENT TO THE PERIOD OF SUCH DELAY.

THE PROVISIONS OF THIS SECTION MAY BE CONSTRUED TO EXCUSE OR DELAY ANY PAYMENT DUE UNDER THE TERMS OF THIS AGREEMENT.

7.01-14 NON-WAIVER

A FAILURE TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT OPERATE AS A WAIVER OF ANY FUTURE BREACH OF THE SAME OR ANY OTHER PROVISION.

7.01-15 EXPENSES

EACH PARTY AGREES TO BEAR ALL THE EXPENSES IT INCURS IN CONNECTION WITH THE CONTRACT AND THE TRANSACTIONS THAT ARE CONTEMPLATED EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT.

7.01-16 REIMBURSEMENT OF COSTS

PROVIDER SHALL, ON DEMAND, REIMBURSE [NAME OF PARTY] FOR ALL REASONABLE COSTS AND EXPENSES OF ANY TYPE THAT KENOSHA COUNTY INCURS IN CONNECTION WITH THIS AGREEMENT (INCLUDING PERFORMANCE AND ENFORCEMENT OF ITS PROVISIONS, ALSO ANY ENGINEERING, LEGAL, COURT COSTS, ATTORNEY FEES AND COSTS OF LITIGATION AND OTHER CONSULTING FEES.

7.01-17 OWNERSHIP OF FINISHED PRODUCT

ALL WORK-PRODUCTS DEVELOPED FOR KENOSHA COUNTY AND PAID FOR BY KENOSHA COUNTY UNDER THE TERMS OF THIS AGREEMENT SHALL BE THE SOLE PROPERTY OF KENOSHA COUNTY.

7.01-18 ERRORS IN MATH

ANY ERRORS IN MATHEMATICS SHALL BE INTERPRETED TO REFLECT THE TRUE INTENT OF THE PARTIES.

AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_

7.01-19 Change Orders

CHANGE ORDERS IN EXCESS OF 15% CUMULATIVE OF A CONTRACTED PRICE SHALL BE PRE-APPROVED BY THE COUNTY BOARD IN THOSE CASES WHERE SUCH ADDITIONAL COSTS EXCEED BUDGETED AMOUNTS.

7.01-20 Access to Records, Discovery and Inspection

THE PROVIDER SHALL UPON 48 HOURS NOTICE GRANT THE COUNTY ACCESS TO ALL RECORDS AND DOCUMENTS IN THEIR [HIS OR HER] POSSESSION OR CUSTODY OR CONTROL WHICH PERTAIN TO ANY PROVISION OF THIS AGREEMENT.

7.01-21 Access and Audit – Required

IT IS AGREED THAT FOR ACCOUNTING AND AUDITING PURPOSES, THE FISCAL YEAR SHALL BE A CALENDAR YEAR. PRIOR TO THE CLOSE OF EACH CALENDAR YEAR AND AT THE OPTION OF KENOSHA COUNTY, THE PROVIDER SHALL AT THEIR EXPENSE ENGAGE A FIRM OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS (“CPA FIRM”) ACCEPTABLE TO KENOSHA COUNTY TO AUDIT THEIR BOOKS AND RECORDS AS THEY MAY PERTAIN TO THIS AGREEMENT.

THE PROVIDER SHALL PROVIDE AN AUDIT THAT RELATES TO:

THE COMPLETED AUDIT SHALL INCLUDE SEPARATE CALCULATIONS OF:

THE AUDIT SHALL BE CONDUCTED IN ACCORDANCE WITH THE MOST RECENT VERSION OF THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS AUDITING GUIDE.

THE AUDIT CONTEMPLATED UNDER THIS SECTION SHALL BE COMPLETED WITHIN ONE HUNDRED TWENTY (120) DAYS OF THE CLOSE OF A CALENDAR YEAR. WITHIN THIRTY (30) DAYS OF THE COMPLETION OF THE AUDIT, PROVIDER SHALL FORWARD COPIES OF THE AUDIT AND ANY OPINIONS AND/OR VERIFICATIONS/CERTIFICATIONS OF THE CPA FIRM DESCRIBED HEREIN TO THE COUNTY. IN THE EVENT THAT SUCH AUDIT AND SUCH OPINIONS AND/OR VERIFICATIONS/CERTIFICATIONS DESCRIBED HEREIN ARE NOT SUBMITTED TO THE COUNTY WITHIN ONE HUNDRED EIGHTY (180) DAYS OF THE CLOSE OF A CALENDAR YEAR, THE COUNTY MAY, AT THE EXPENSE OF THE PROVIDER, PERFORM THE AUDIT. IN THE EVENT THAT SUCH AUDIT IS INITIATED, THE PROVIDER SHALL FULLY COOPERATE, INCLUDING PROVIDING ACCESS TO ALL PERTINENT BOOKS AND RECORDS TO THE CPA FIRM RETAINED BY THE COUNTY.

[IF THE AUDIT SHOWS THAT THE PRIOR QUARTERLY PAYMENTS TO THE COUNTY UNDER THIS AGREEMENT WERE LESS THAN THE QUARTERLY PAYMENTS THAT SHOULD HAVE BEEN PAID TO THE COUNTY UNDER THE AUDIT THE PROVIDER SHALL, WITHIN 60 DAYS AFTER RECEIPT OF THE AUDIT, MAKE A SEPARATE PAYMENT TO THE COUNTY OF THE DIFFERENCE BETWEEN SUCH AMOUNTS. IF THE AUDIT SHOWS THAT THE PROVIDER PAID MORE IN PRIOR QUARTERLY PAYMENTS UNDER THIS AGREEMENT THAN THE AMOUNT REFLECTED IN THE AUDIT, THE PROVIDER SHALL PROVIDE AN INVOICE SHOWING THE DIFFERENCE BETWEEN SUCH AMOUNTS TO THE COUNTY FOR PAYMENT BY THE COUNTY.]

7.01-22 Security and Confidentiality of Data

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

1 AT SUCH TIME AS THIS AGREEMENT IS TERMINATED AND/OR LEASED EQUIPMENT REMOVED OR REPLACED,
2 THE PROVIDER AGREES TO PERMANENTLY ERASE OR REMOVE ANY HARD DRIVE OR OTHER DEVICE WHERE
3 DATA THAT IS PRINTED, COPIED, SCANNED OR FAXED IS STORED UNENCRYPTED OR IN ANY FORMAT THAT
4 COULD BE RETRIEVED. PRIOR TO REMOVING SAID EQUIPMENT, THE PROVIDER SHALL SIGN A WRITTEN
5 CERTIFICATION OF REMOVAL GUARANTEEING SUCH REMOVAL AND INDEMNIFYING AND HOLDING THE COUNTY
6 HARMLESS FOR ANY CLAIMS, DAMAGES, INJURIES, ATTORNEY FEES, AND COSTS RESULTING FROM RETRIEVAL
7 OF ANY SUCH DATA.
8

9 **7.01-23 Incorporations of Requests for Proposals or Bids - Entire Agreement
10 and No Reliance on Representations**

11 REPRESENTATIONS MADE IN RESPONSE TO A COUNTY REQUEST FOR PROPOSALS OR BIDS AND ATTACHED
12 HERETO ARE INCORPORATED HEREIN AS IF FULLY SET FORTH. EXCEPT AS MAY OTHERWISE BE NOTED OR
13 PROVIDED FOR HEREIN, THIS AGREEMENT REPRESENTS THE ENTIRE INTEGRATED AGREEMENT BETWEEN THE
14 PARTIES AND SUPERSEDES ALL PAST AGREEMENTS AND ALL NEGOTIATIONS, REPRESENTATIONS, PROMISES
15 OR AGREEMENTS, EITHER WRITTEN OR ORAL, MADE DURING THE COURSE OF NEGOTIATIONS LEADING TO THIS
16 AGREEMENT.
17

18 **7.01-24 AMBIGUITIES AND INTERPRETATIONS; CONFLICT IN LANGUAGE**

19 ANY PROVISIONS, CLAUSE OR WORD CONTAINED IN THIS AGREEMENT THAT IS SUBJECT TO MORE THAN ONE
20 REASONABLE INTERPRETATION AS TO THE INTENT OF THE PARTIES MAY BE CONSIDERED AMBIGUOUS. IN THE
21 CASE OF SUCH AN AMBIGUITY RESORT MAY BE MADE TO RECOGNIZED RULES OF CONTRACT INTERPRETATION
22 TO DETERMINE THE INTENT OF THE PARTIES. IF ANY PROVISIONS OF THIS AGREEMENT ARE IN CONFLICT, THE
23 PARTIES SHALL MEET TO RESOLVE THE CONFLICT.
24
25

26 **7.01-25 Warranties**

27 WARRANTIES PERTAINING TO THIS AGREEMENT ARE ATTACHED HERETO AS AN EXHIBIT AND INCORPORATED
28 HEREIN AS IF FULLY SET FORTH
29

30 **7.01-26 Amendment and Modification of this Agreement**

31 THE PARTIES MAY, ONLY SUBJECT TO THE APPROVAL OF THEIR RESPECTIVE BOARDS, AGREE TO A WRITTEN
32 MODIFICATION OF THIS AGREEMENT AND THE TERMS AND CONDITIONS CONTAINED HEREIN.
33

34 **7.01-27 Approval, Successors and Assigns**

35 THIS AGREEMENT SHALL BE BINDING UPON AND INURE TO THE BENEFIT OF THE PARTIES HERETO, THEIR
36 SUCCESSORS, APPROVED ASSIGNEES AND TRANSFEREES, VOLUNTARY OR INVOLUNTARY RECEIVERS AND
37 TRUSTEES, OR ANY OTHER SUBSEQUENT OWNER OR OPERATOR OF THE PARTY CONTRACTING WITH THE
38 COUNTY WHICH ACQUIRES ITS EQUITABLE OR LEGAL OWNERSHIP FROM OR THROUGH SAID PARTY.
39

40 **7.01-28 No 3rd Party Beneficiary**

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

1 THIS AGREEMENT IS PERSONAL TO THE PARTIES TO THIS AGREEMENT AND IS NOT INTENDED FOR THE BENEFIT
2 OF ANY OTHER PARTY.

3
4 **7.01-29 Joint Draft**

5
6 THIS AGREEMENT HAS BEEN THE SUBJECT OF MUTUAL NEGOTIATIONS BETWEEN THE PARTIES AND THEIR
7 RESPECTIVE COUNSEL. THIS AGREEMENT HAS BEEN AND SHALL BE CONSTRUED TO HAVE BEEN JOINTLY
8 DRAFTED BY THE PARTIES IN ORDER TO PRECLUDE THE APPLICATION OF ANY RULE OF CONSTRUCTION
9 AGAINST A PARTY'S INTEREST AS THE SOLE DRAFTER OF THIS AGREEMENT.

10
11
12 **7.01-30 Severability**

13
14 IF ANY COURT OF COMPETENT JURISDICTION DETERMINES THAT ANY PROVISION OF THIS AGREEMENT IS
15 INVALID OR UNENFORCEABLE, THEN SUCH INVALIDITY OR UNENFORCEABILITY SHALL HAVE NO EFFECT ON THE
16 OTHER PROVISIONS HEREOF, WHICH SHALL REMAIN VALID, BINDING AND ENFORCEABLE AND IN FULL FORCE
17 AND EFFECT. IN THE EVENT OF SUCH A DETERMINATION BY SUCH COURT, THE PARTIES SHALL PROMPTLY MEET
18 TO DISCUSS HOW THEY MIGHT SATISFY THE TERMS OF THIS AGREEMENT BY ALTERNATIVE MEANS. THE
19 PARTIES SHALL USE THEIR BEST EFFORTS TO FIND, DESIGN AND IMPLEMENT A MEANS OF SUCCESSFULLY
20 EFFECTUATING THE TERMS OF THIS AGREEMENT. IF NECESSARY, THE PARTIES SHALL NEGOTIATE
21 APPROPRIATE AMENDMENTS OF THIS AGREEMENT TO MAINTAIN, AS CLOSELY AS POSSIBLE, THE ORIGINAL
22 TERMS, INTENT AND BALANCE OF BENEFITS, AND BURDENS OF THIS AGREEMENT. IN THE EVENT THE PARTIES
23 ARE NOT ABLE TO REACH AGREEMENT IN SUCH SITUATION, THE DISPUTE RESOLUTION PROCEDURE AS SET
24 FORTH IN THIS AGREEMENT SHALL APPLY.

25
26
27 **7.01-31 Compliance with Pre-conditions and Authorization to Execute**

28
29 EACH PARTY REPRESENTS AND WARRANTS THAT EACH HAS PERFORMED ALL ACTS PRECEDENT TO ADOPTION
30 OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, MATTERS OF PROCEDURE AND NOTICE, AND EACH HAS
31 THE FULL POWER AND AUTHORITY TO EXECUTE THIS AGREEMENT AND TO PERFORM ITS OBLIGATIONS IN
32 ACCORDANCE WITH THE TERMS AND CONDITIONS THEREOF, AND THAT THE REPRESENTATIVE EXECUTING THIS
33 AGREEMENT ON BEHALF OF SUCH PARTY IS DULY AND FULLY AUTHORIZED TO SO EXECUTE AND DELIVER THIS
34 AGREEMENT.

35
36 **7.01-32 Reserved for Future Use**

37
38 **7.01-33 Separate Counterparts Execution**

39
40 THIS AGREEMENT MAY BE EXECUTED IN SEPARATE COUNTERPARTS, EACH OF WHICH SHALL BE DEEMED AN
41 ORIGINAL AND MAY BE EXECUTED BY FACSIMILE WITH ORIGINAL SIGNATURE PAGES TO BE PROVIDED TO THE
42 OTHER PARTY WITHIN THREE (3) BUSINESS DAYS.

43
44 **7.01-34 Gender - Headings**

45
46 THE USE OF THE MASCULINE REFERENCE IS INTENDED TO INCLUDE THE FEMININE. SECTION HEADINGS AND

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

TITLES ARE INTENDED ONLY AS AIDES

7.01-35 Authorized Agents

THE AUTHORIZED AGENTS OF THE PARTIES ARE NOTED IN THE ATTACHED EXHIBIT WHICH IS INCORPORATED HEREIN AS IF FULLY SET FORTH. THE PARTIES SHALL KEEP THIS LIST CURRENT DURING ALL PERTINENT TIMES OF THE AGREEMENT AND EACH PARTY SHALL NOTIFY THE OTHER WITHIN FIVE BUSINESS DAYS OF ANY CHANGE IN NAMES, ADDRESSES, AND TELEPHONE NUMBERS.

7.01-36 Notice

ANY NOTICE REQUIRED TO BE GIVEN TO KENOSHA COUNTY UNDER THE TERMS OF THIS AGREEMENT SHALL BE GIVEN TO ITS AUTHORIZED AGENT AT THE AFOREMENTIONED ADDRESS AND TO THE FOLLOWING:

THE KENOSHA COUNTY EXECUTIVE
KENOSHA COUNTY ADMINISTRATION BUILDING,
1010 - 56TH STREET, KENOSHA, WISCONSIN
FAX 262-653-2817

IN ADDITION, ALL NOTICES PERTAINING TO MATTERS INVOLVING CLAIMS, DISPUTE RESOLUTION, LITIGATION OR LEGAL PROCESS, SHALL BE COPIED TO

THE CORPORATION COUNSEL'S OFFICE 1010 - 56TH STREET
KENOSHA, WISCONSIN 53140
FAX [262] 653-6684

NOTICE SHALL BE GIVEN IN WRITING, SENT BY EITHER PERSONAL DELIVERY, CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR OVERNIGHT MAIL. OR FAXED.

IF SENT VIA PERSONAL DELIVERY, THE NOTICE SHALL BE EFFECTIVE ON THE DATE OF DELIVERY. IF SENT BY CERTIFIED MAIL, THE NOTICE SHALL BE DEEMED EFFECTIVE FIVE (5) DAYS AFTER SUCH MAILING, NOT COUNTING THE DAY SUCH NOTICE WAS SENT. IF SENT BY OVERNIGHT MAIL, THE NOTICE SHALL BE EFFECTIVE ON THE DATE OF DELIVERY. IF SEND BY FAX, NOTICE SHALL BE EFFECTIVE AT NOON ON THE FIRST BUSINESS AFTER THE FAX WAS SENT.

IN WITNESS WHEREOF, the parties hereto accept the terms of this Agreement and execute this Agreement on _____20_____ at Kenosha, Wisconsin.

Kenosha County, Wisconsin

By: _____

NAME: _____

TITLE: _____

AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_

(SEAL)

COMMISSION EXPIRES COMMISSION EXPIRES [IS PERMANENT] _____
NOTARY PUBLIC

Exhibits

Warranties

Authorized Agents

THE FOLLOWING ARE THE RESPONSIBLE MANAGERS, AGENTS, ADMINISTRATORS AND/OR OVERSIGHT COMMITTEES OF THE PARTIES.

KENOSHA COUNTY'S AUTHORIZED AGENT WITH RESPECT TO THE ADMINISTRATION OF THIS AGREEMENT IS:

NAME
ADDRESS
PHONE/FAX

[NAME OF PARTY] 'S AUTHORIZED AGENT WITH RESPECT TO THE ADMINISTRATION OF THIS AGREEMENT IS:

NAME
ADDRESS
PHONE/FAX

H:\6 Policies\CH_COContractingPolicy\ContractPolicyPlusClauses\WebPosting\CURRENT WEB POSTING\3 BasicFormat Kenosha County Contracts Form 1a Revised April 2011.wpd

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

CONTRACT ADMINISTRATION CHECK LIST FOR AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY AND _____ DATED _____			
CONTRACT SECTION O.			
	1ST PARTY		
	AUTHORIZED AGENT:		
	ADDRESS:		
	PHONE:	FAX:	
	2ND PARTY		
	AUTHORIZED AGENT:		
	ADDRESS:		
	PHONE:	FAX:	
	DATES		
	COMMENCEMENT		

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

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	COMPLETION (SUBSTANTIAL)					
	COMPLETION					
	RENEWAL OPTIONS NOTICE					
	REVIEW DATES					
	GROUNDS FOR TERMINATION FOR CAUSE	OPPORTUNITY TO CURE	YES	W/IN _____ DAYS	NOTICE GIVEN ON	
			NO			
	TERMINATION WITHOUT CAUSE	____ DAYS NOTICE REQUIRED	DATE NOTICE GIVEN			
	CONSIDERATION					
	DATE PAID / RECEIVED					
	INSPECTION					
	INVENTORY					
	ADEQUATE FUNDING, BUDGET AUTHORIZATION					

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

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	MATHEMATICAL CALCULATIONS		
	LOCAL PREVAILING WAGE RATE COMPLIANCE IN PUBLIC WORK CONTRACTS		
	DATE PAID		
	SPECIAL CONTINGENCIES AND DATES		

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

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	SPECIAL FEDERAL AND STATE REQUIREMENTS			
	INSURANCE	TYPE	AMOUNT	CERTIFICATE FILED
	DETERMINATION OF INSURANCE LEVEL	LIABILITY		
		PROPERTY		
		BUILDER'S RISK		
		AUTO		
		WORKER'S COMP		
		UNEMPLOY. COMP		
		BOILER		
		MALPRACTICE OCCURRENCE		

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

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		CLAIMS MADE		
		ENVIRONMENTAL		
		UMBRELLA		
		GAP/TAIL END		
	BOND / LETTER OF CREDIT	DATE	AMOUNT \$	
	AUDITS AND INSPECTION NECESSITY			
	DISPUTE RESOLUTION DEADLINES AND AVAILABLE REMEDIES			
	RECORDING AND FILING [REGISTER OF DEEDS, COUNTY CLERK, CORPORATION COUNSEL]			

**AN AGREEMENT BY AND BETWEEN KENOSHA COUNTY, WISCONSIN
AND _____, _____, 201_**

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	STATUTORY COMPLIANCE [ETHICS CODE, OPEN MEETING AND PUBLIC RECORDS LAWS, LEGAL REVIEW, COUNTY PURCHASING AND BIDDING ORDINANCE AND POLICES]		
	WARRANTY TIME LINES – EXPRESS AND /OR IMPLIED		
	NOTICE DEADLINES		
	REQUIRED APPROVALS AND EXECUTION / NOTARIZATION		
	RETENTION AND CENTRAL FILING AND DESTRUCTION DATES [MONITORING OF STAT OF LIMITATIONS AND REPOSE DATES] CONFIDENTIALITY ASSURANCES		

H:\6 POLICIES\CH_COCONTRACTINGPOLICY\CONTRACTPOLICYPLUSCLAUSES\WebPosting\CURRENT WEB POSTING\3 BasicFormat KENOSHA COUNTY CONTRACTS FORM 1A REVISED APRIL 2011.WPD