

**CITY OF WEST ALLIS
PROCEED ORDER**

TO: **BICYCLE FEDERATION OF WISCONSIN**

DATE: May 26, 2015

PROJECT: Engineering Consulting Services for bike accommodations along Hwy 100.

In accordance with Resolution No. R-2015-0105 and the Agreement for Professional Services dated May 6, 2015 (the "Agreement"), you are directed to proceed with work on the Project as outlined below:

Work: See attached Scope of Services dated April 2015.

Estimate: \$ 5,000.00

Schedule: Work to commence immediately. To be completed as part of the Basic Services under the Agreement.

This Proceed Order, including any attachments, is incorporated into the Agreement. All work defined in this Proceed Order and payment therefor shall be performed in accordance with the terms and conditions of the Agreement, unless otherwise modified herein. Any modification(s) of this Proceed Order is subject to approval and acceptance pursuant to the Agreement.

Issued:

By: John F. Stibel
Title: Executive Director
Community Development Authority

Date: 5-26-15

Received and Approved:

By: [Signature]
Title: Executive Director
Bla. Fed.

Date: 6/25/15

ATTACHMENTS:
Scope of Services

COMPTROLLER'S CERTIFICATE

Countersigned this 10 day of June, 2015,
and I certify that the necessary funds have been
provided to pay the liability that may be incurred
by the City of West Allis under this Contract.

Mark D. Wyss
Mark D. Wyss,
Director of Finance/Comptroller/Treasurer

CITY OF WEST ALLIS
AGREEMENT FOR PROFESSIONAL SERVICES

This AGREEMENT is entered into by and between the CITY OF WEST ALLIS, Wisconsin (the "City"), a municipal corporation) and BICYCLE FEDERATION OF WISCONSIN (the "Consultant").

WHEREAS, the City has solicited proposals from qualified persons to furnish Engineering Consulting Services for bike accommodations along Hwy 100 (the "Project"); and,

WHEREAS, Consultant has submitted a proposal to provide such services; and,

WHEREAS, the City is authorized to enter into this Agreement with Consultant for such services and has authorized the expenditure of funds to pay the liability that will accrue to the City under this Agreement.

NOW, THEREFORE, in consideration of these premises the parties hereby mutually agree as set forth in the following pages, exhibits and schedules which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement together with the attachments, which are made a part hereof.

CITY OF WEST ALLIS:

CONSULTANT:

By: John R. Stahl

By: [Signature]

Title: Director of Development

Title: Executive Director

Date: 5-26-15

Date: 7/14/15

ATTACHMENTS:
GENERAL CONDITIONS OF AGREEMENT
SCOPE OF SERVICES
CONSULTANT'S HOURLY RATES
INSURANCE REQUIREMENTS
WORK ORDER

Scott/City-Consultants-Agrmnt Prof Serv-Form

Approved as to form this 8 day
of June, 2015.

[Signature]
City Attorney



**WISCONSIN
BIKE FED**

BICYCLE FEDERATION OF WISCONSIN

3618 W PIERCE STREET
MILWAUKEE, WI 53215
414-431-1798

Scope of Services for the HWY 100 Bicycle Facilities Review for the City of West Allis

Wisconsin Bike Fed

April 2015

The City of West Allis has requested a Scope of Services from the Wisconsin Bike Fed to review the possibility of accommodations for bicyclists within 1000' of the existing corridor ROW of HWY 100 within the city limits.

In the HWY 100 Vision Study 2012, the plan called for widening the corridor to accommodate the projected 2035 projected peak hour traffic counts. This reconstruction would have allowed for 5' bikes lanes but at the cost of millions of dollars of tax base, and the relocation of businesses and private property. This plan has been tabled and WisDOT has initiated a new examination of the corridor. The south section of the 10 mile project corridor is located in West Allis and Wauwatosa, and comprises 4.8 miles.

The Wisconsin Bike Fed will review all materials to date regarding the corridor redesign, and examine screenline pedestrian and bicycle counts and transit boarding numbers for the West Allis portion of the corridor as well as the projected traffic counts. Using best practices, NACTO and comfort level factors for bicyclists, the Bike Fed will make recommendations as how to best accommodate bicyclists on HWY 100, both on street and off- street, and at intersections within the study area. These intersections include W National Avenue, W Lincoln Avenue and W Cleveland Avenue. If there are no screenline counts available for the study area, the BF will conduct those counts. The Bike Fed will also attend any relevant meetings with WisDOT regarding the project, in West Allis or Madison, if necessary.

Fee: The Bike Fed proposes a flat rate of \$50/hour for the study, not to exceed \$5,000.

CITY OF WEST ALLIS
GENERAL CONDITIONS OF AGREEMENT FOR
PROFESSIONAL SERVICES

CONSULTANT: BICYCLE FEDERATION OF WISCONSIN

PROJECT: ENGINEERING CONSULTING SERVICES FOR BIKE ACCOMODATIONS
ALONG HWY 100.

1.01 BASIC SERVICES

A. Basic Services of CONSULTANT to be provided under this AGREEMENT are listed in the Scope of Services, attached hereto and made a part of this AGREEMENT by reference.

B. Payment for Basic Services shall be made in accordance with Section 3 of this Agreement.

2.01 SERVICES REQUIRING AUTHORIZATION IN ADVANCE

A. Those services listed in the Scope of Services but not identified in Section 1 of this AGREEMENT may be requested by the CITY to complete the work, are considered additional services. The CITY may request CONSULTANT at a future date to perform any or all of these services by a written authorization to proceed with the Additional Service(s). The written authorization to proceed shall become an Amendment to the Agreement.

B. Payment for the Additional Service(s) shall be in accordance with Section 3 of this AGREEMENT.

3.01 BASIC SERVICES

A. CITY shall pay CONSULTANT for Basic Services rendered under Section 1 on the basis of CONSULTANT'S Hourly Rate, plus Reimbursable Expenses and Services of Professional Associates and other Consultants as defined in this Section 3.

B. CONSULTANT estimates that the total cost required to perform Basic Services as enumerated in Section 1 will not exceed Five Thousand Dollars (\$5,000.00).

Given the assumptions which must be made, the CITY recognizes that the CONSULTANT cannot guarantee the complete accuracy of its estimate of total cost, and, therefore waives any claim against CONSULTANT in this regard, except to the extent that any cost overrun can be attributable to fraudulent conduct, bad faith or inexcusable ignorance or incompetence.

3.02 ADDITIONAL SERVICES

CITY shall pay CONSULTANT for Additional Services rendered under Section 2 as follows:

1. For Additional Services of CONSULTANT'S principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of CONSULTANT'S Hourly Rate.
2. For services and Reimbursable Expenses of independent Professional Associates and Consultants employed by CONSULTANT to render Additional services pursuant to Section 2, the amount billed to CONSULTANT therefore.

3.03 REIMBURSABLE EXPENSES

A. As used in this AGREEMENT Reimbursable Expenses mean the actual expense incurred by CONSULTANT or its independent Professional Associates or Consultants, directly or indirectly in connection with the Project, such as expenses for: toll telephone calls and express mailings, reproduction of reports, drawings, specifications, bidding documents, laboratory tests and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by the CITY, overtime work requiring higher than regular rates.

B. The Reimbursable Expenses for Basic Services are as set forth in the CONSULTANT'S Hourly Rates attached hereto and made a part of this AGREEMENT.

3.04 HOURLY RATES.

As used in this AGREEMENT hourly rates used as a basis for payment mean salaries and wages (basic and incentive) paid to all CONSULTANT'S personnel engaged directly on the Project, including but not limited to other technical and business personnel as set forth in the CONSULTANT'S Hourly Rates.

3.05 TIME OF PAYMENT

A. CONSULTANT shall submit monthly statements on or before the twentieth of the month for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The CITY shall make prompt payment on or before the twentieth of the month following the date of the CONSULTANT monthly statement.

4.01 COMMENCEMENT OF WORK

A. CONSULTANT shall commence the work to be performed under this AGREEMENT upon receipt of a written Work Order or verbal authorization to proceed from the CITY. Each Work Order or verbal authorization shall define by task(s) the scope of services to be performed. Verbal authorizations shall be followed up with written Work Orders.

B. Additional services shall be commenced at within the time agreed to between the CONSULTANT and the CITY at the time such services are authorized.

C. The CITY shall not be liable to CONSULTANT and/or any of its independent Professional Associates and Consultants and/or subcontractors for claims or damages or monetary

claims of any nature caused by or arising out of delays from any cause whatsoever, including but not limited to any time which may be specified for the notice to proceed under this AGREEMENT. The sole remedy against the CITY for delays shall be the allowance to claimant of additional time for completion of work, the amount thereof to be reasonable as determined by the CITY.

4.02 COMPLETION OF WORK

A. CONSULTANT shall complete the work to be performed under this AGREEMENT within the time specified in the Scope of Services, or if none is specified, then within a reasonable time for the type of work involved.

B. Additional services shall be completed within the time agreed to between the CONSULTANT and the CITY at the time such services are authorized.

5.01 APPLICABLE LAW

This AGREEMENT shall be governed by the laws of the State of Wisconsin and venue for any action concerning this AGREEMENT shall be in Milwaukee County, Wisconsin. The CONSULTANT shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this AGREEMENT.

6.01 APPROVALS OR INSPECTIONS

None of the approvals or inspections performed by the CITY shall be construed or implied to relieve the CONSULTANT from any duty or responsibility it has for its professional performance, unless the CITY formally assumes such responsibility through a letter from the CITY expressly stating that the responsibility has been assumed.

7.01 DISPUTE RESOLUTION

In the event a dispute arises under this AGREEMENT, which is not resolvable through informal means, the parties agree to submit the dispute to the following resolution mechanism prior to pursuing other available legal remedies. Upon receipt of a written request by either party to utilize this provision each party shall have five working days to notify the other as to the name and address of the person designated to present the dispute for that party. Upon designation of the dispute resolution representatives, those persons shall have ten working days to appoint a mutually acceptable third person to hear the dispute, and to agree on a time and location to hear the matter in dispute. The representatives shall jointly determine the procedure to be used for gathering information and hearing the dispute. Binding mediation or arbitration shall not be chosen as a dispute resolution method.

8.01 ASSIGNMENT

Neither this AGREEMENT nor any right or duty, in whole or in part, of the CONSULTANT under this AGREEMENT may be assigned, delegated or subcontracted without the written consent of the CITY.

Nothing under this AGREEMENT shall be construed to give any rights or benefits in this

AGREEMENT to anyone other than the CITY and the CONSULTANT, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of the CITY and the CONSULTANT and not for the benefit of any of any other party.

9.01 CANCELLATION; TERMINATION

A. The CITY reserves the right to cancel this AGREEMENT in whole or in part, without penalty, due to non-appropriation of funds or for failure of the CONSULTANT to comply with terms, conditions, or specifications of this AGREEMENT.

B. The CITY may terminate this AGREEMENT for any reason at any time upon not less than 10 days' written notice to the CONSULTANT.

C. In the event of termination, the CITY shall pay the CONSULTANT for that portion of the work satisfactorily performed prior to the date of termination.

D. If this AGREEMENT is cancelled or terminated by the CITY for reasons other than the failure of the CONSULTANT to comply with terms, conditions or specifications of this AGREEMENT, the CONSULTANT shall also be entitled to reasonable cancellation or termination costs relating to costs incurred by the CONSULTANT for commitments, which had become firm prior to the cancellation or termination.

E. Upon cancellation or termination under Paragraph A. or B., above, the CONSULTANT shall promptly discontinue all affected work (unless the notice of termination directs otherwise), and deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this AGREEMENT, whether completed or in progress.

F. If any undisputed invoice shall not be paid within the payment terms of this AGREEMENT, CONSULTANT shall have the right, after giving seven (7) days written notice, to suspend all Services on the project until all accounts have been paid. If any overdue invoice shall not be paid within forty-five (45) calendar days after the date of the invoice, CONSULTANT shall have the right to terminate this AGREEMENT.

10.01 DISCLOSURE

If a city official (as defined under Section 3.02(1) of the Revised Municipal Code of the City of West Allis), a member of official's immediate family, or any organization in which a city official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to this AGREEMENT, and if this AGREEMENT involves payment of more than three thousand dollars (\$3,000) within a twelve (12) month period, this AGREEMENT is voidable by the City unless appropriate disclosure is made according to Section 3.5 of the Revised Municipal Code, before signing the AGREEMENT. Disclosures shall be made to the Ethics Board of the City of West Allis, 7525 West Greenfield Avenue, West Allis, Wisconsin 53214 (Telephone 414-302-8200).

11.01 ENTIRE AGREEMENT; AMENDMENTS

This AGREEMENT, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement between the parties and previous communications or agreements pertaining to the subject matter of this AGREEMENT are hereby superseded. Any contractual revisions including cost adjustments and time extensions may be made only by a written amendment to this AGREEMENT, signed by both parties prior to the ending date of this AGREEMENT.

12.01 FORCE MAJEURE

No party shall be responsible to the other party for any resulting losses and it shall not be a default of this AGREEMENT if the fulfillment of any of the terms of this AGREEMENT is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, unusual adverse weather conditions, or by any other cause not within the control of the party whose performance was interfered with and which by the exercise of reasonable diligence such party is unable to prevent, whether of the class of enumerate causes or not, and the time for performance shall be extended by the period of delay occasioned by any such cause. Upon the occurrence of a force majeure, written notice to the other party shall be given as herein provided. If the period of non-performance exceeds thirty (30) days from the receipt of the notice, the party whose ability to perform has not been so affected may, by written notice, terminate this AGREEMENT.

13.01 INDEMNIFICATION; LIABILITY

A. To the fullest extent allowable by law, Contractor hereby indemnifies and shall defend and hold harmless the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City of West Allis, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Contractor, any subcontractor, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under worker's compensation, disability benefit, or other employee benefit laws.

No provision of this indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located.

Contractor shall reimburse the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City of West Allis, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

B. CITY agrees to indemnify, defend and hold harmless CONSULTANT and its subcontractors, consultants, agents, directors, and employees from and against all claims, suits, damages, and losses, including, but not limited to, those claims, suits, damages, or losses caused or arising out of, relating to, or based upon: 1) the acts, omissions, or other conduct of CITY; and [2) the actual or threatened dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes acids, alkalis, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere or on, onto, upon, in or into the surface or subsurface of soil, water or water course, objects, or any tangible or intangible matter, whether abated or not; except to the extent that such damage or loss is caused by the negligent acts or willful misconduct of CONSULTANT or its agents, officers, directors, or employees.] [For environmental services only.]

C. Nothing contained within this AGREEMENT is intended to be a waiver or estoppel of the City or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin Statutes Sections 893.80 and 345.05. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

14.01 INDEPENDENT CONTRACTOR

The CITY agrees that the CONSULTANT shall have sole control of the method, hours worked, and time and manner of any performance under this AGREEMENT other than as specifically provided herein. The CITY reserves the right only to inspect the job site or premises for the purpose of insuring that the performance is progressing or has been completed in compliance with the AGREEMENT. The CITY takes no responsibility for supervision or direction of the performance of the AGREEMENT to be performed by the CONSULTANT or the CONSULTANT'S employees or agents. The CITY further agrees that it will exercise no control over the selection and dismissal of the CONSULTANT'S employees or agents.

15.01 REPORT AND DOCUMENTATION REQUIREMENTS

A. The CONSULTANT'S invoices will be reduced by the sums set forth below for each week that the CONSULTANT fails to submit a report or document required under this AGREEMENT'S time schedule unless the CITY determines that such delay is attributable to a force majeure as defined in Section 8., above. These reductions shall accrue in the amount of 5% of the Work Order for the first week and 10% of the Work Order for each week thereafter, for each report or document, which is overdue.

B. Assessment of reductions under this Section does not preclude the CITY from pursuing any other remedies or sanctions because of the CONSULTANT'S failure to comply with any of the terms of this AGREEMENT, including a suit to enforce the terms of this AGREEMENT.

C. With respect to any individual failure to submit a report or document required under this AGREEMENT'S time schedule, the CITY may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this Section.

16.01 NO WAIVER OF CONDITIONS

The failure of either party to insist on strict performance of this AGREEMENT does not constitute a waiver of any of the provisions of this AGREEMENT or a waiver of any default of the other party.

17.01 OWNERSHIP OF DOCUMENTS

A. Upon completion of the services provided for in this AGREEMENT, or upon payment for services as provided for in Section 5., all reports, specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the CITY.

B. CONSULTANT shall retain one copy of all documents for its file. Any documents generated by CONSULTANT used by the CITY beyond the intended purpose shall be at the sole risk of the CITY, unless otherwise agreed upon by CONSULTANT in writing. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless CONSULTANT, its subcontractors, consultants, officers, directors, employees and agents, for any loss or damages arising out of the unauthorized use of such documents by the CITY.

18.01 OWNERSHIP OF WASTES [Environmental Contract Only]

The CITY acknowledges that the CONSULTANT is not, by virtue of this AGREEMENT, the owner or generator of any waste materials generated as a result of the services performed by the CONSULTANT under this AGREEMENT.

19.01. PERIOD OF AGREEMENT

This AGREEMENT shall commence upon its signing by both parties and shall follow the schedule developed herein, during which period all performance as described in this AGREEMENT

shall be fully completed to the satisfaction of the CITY.

20.01 RELEASE OF INFORMATION

The CONSULTANT may not issue press releases or provide information to any third party regarding the Project without the prior written approval of the CITY, except as required by Federal or State regulations, or court order.

21.01 SAFETY

The CONSULTANT shall initiate, maintain and provide supervision of safety precautions and programs for CONSULTANT'S own employees, and shall require its subcontractors or subconsultants to comply with state and local safety laws and regulations in connection with its services. However, the CONSULTANT is not responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the project site carried on by other persons or firms directly employed by the CITY as separate consultants or contractors. The CITY agrees to require any such separate consultants or contractors to comply with federal, state and local safety laws and regulations and to comply with all reasonable requests and directions of the CONSULTANT for the elimination or abatement of any safety hazards at the project site.

22.01 SITE ACCESS; DATA

A. Unless the Scope of Work provides otherwise, the CITY shall obtain or provide reasonable access for the CONSULTANT to the project site when necessary and at any reasonable time requested.

B. The CITY shall attempt to provide the CONSULTANT with all relevant data and information in its possession regarding the project site. However, in providing such data and information, the CITY or the CONSULTANT assumes no responsibility for its accuracy, reliability or completeness.

23.01 STANDARD OF PERFORMANCE

The CONSULTANT'S services shall be performed with the usual thoroughness, skill and competence of the consulting profession, in accordance with the standard for professional services prevailing at the time those services are rendered.

24.01 SURVIVAL

These General Terms and Conditions shall survive the completion of the services under this AGREEMENT and the termination of this AGREEMENT for any cause.

25.01 SUCCESSORS AND ASSIGNS

The CITY and the CONSULTANT each bind themselves, their partners, successors, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this AGREEMENT.

26.01 TITLES

The headings or titles of Sections of this AGREEMENT are used for convenience and ease of reference and are not intended to limit the scope or intent of the Sections.

27.01 ACCESS TO RECORDS

A. The CONSULTANT and subcontractors to the CONSULTANT if any, agree to maintain for inspection by the CITY all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this AGREEMENT and to make such materials available at their respective offices at all reasonable times during the life of the AGREEMENT and for three (3) years from the date of final payment under the AGREEMENT, and to furnish copies thereof if requested.

B. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the CITY.

28.01 ERRORS AND OMISSIONS

The CONSULTANT shall be responsible for the accuracy of the work performed by the CONSULTANT under the AGREEMENT, and shall promptly make necessary revisions or corrections resulting from its negligent acts, errors or omissions without additional compensation.

29.01 CONFLICT OF INTEREST

A. The CONSULTANT warrants it has no public or private interest, and shall not knowingly acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the AGREEMENT.

B. The CONSULTANT shall not employ any person employed by the CITY for any work included under the provisions of the AGREEMENT.

Rev 7/26/13 kp
Scott/City-Consultant-Gen Conditions of Agrmnt-Form

l:\c\Bicycle Federation\Hwy 100

INSURANCE REQUIREMENTS FOR CONSULTANTS

A. INSURANCE REQUIRED.

Consultants shall purchase and maintain for the duration of the contract as required by the City or by Law, insurance indemnifying against claims, suits, personal injury, bodily injury to persons, or damage to property which arises from, or in connection with the performance of the work hereunder by the Consultant. Some contracts may require Completed Operations, Professional Liability or other insurance beyond the contract term.

Consultant acknowledges that the insurance coverage and policy limits set forth in this Insurance Requirement section constitute the minimum amount of coverage required. Any insurance policy or other proceeds broader than or in excess of the specified limits and coverage required in this section, which are applicable to a given loss, shall be available to the City. The Insurance Requirements under this Contract shall be greater of (1) the minimum coverage and limits specified in the Contract or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named. It is agreed that these Insurance Requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum Insurance Requirements of this Contract are sufficient to cover the obligations of the Consultant under the Contract.

Any deductibles or self-insured retentions shall be identified to the City; those which exceed \$10,000 must be declared to and approved by the City. City may require a review of the latest audited financial statements of the Consultant. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, agents and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defenses expenses.

All required insurance under this Contract is to be placed with insurers with a Best's rating of no less than A-VII. Said carriers to be admitted status with the State of Wisconsin, unless otherwise approved in advance by the City. City reserves the right to approve non-admitted carriers with a Best's rating of no less than AX.

Work shall not be commenced under the Contract until all insurance required under this paragraph has been obtained and evidence thereof in the form of certificates, with original endorsements effecting coverage, are filed with and approved by the City. The City reserves the right to require complete, certified copies of all required insurance policies at any such time. Copies of policies shall be provided by Consultant within 10 days of such request.

The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. For Worker's Compensation-related risks, only forms approved by the Insurance Commissioner are to be used.

Consultant shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. Consultant agrees to require in any subcontractor and other agreements to perform any operations under this Contract, or provide products or services in connection with this Contract (parties to such subcontracts and/or agreements collectively shall be referred to as "subcontractors"), that all Subcontractors comply with all of the provisions of this Contract, including the indemnity and insurance provisions to the extent they apply to the scope of the Subcontractor's operations and/or performance under this Contract. Subcontractors hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Contract. No subcontractor shall be permitted to commence work until all required coverage has been obtained and certificates and endorsements thereof are filed with the City. A copy of the Indemnity and Insurance Requirements shall be furnished to the Subcontractors by Consultant upon request.

If any part of a loss is not covered because of the application of a deductible or retention, said loss shall be born by the general Consultant and not the City. Failure to maintain the required insurance may result in termination of this Contract at the option of the City.

It is Consultant's responsibility to ensure its compliance with the Insurance Requirements of the Contract. Any actual or alleged failure on the part of the City to obtain proof of insurance required under the Contract shall not in any way be construed to be a waiver of any right or remedy of the City, in this or any regard.

B. GENERAL ENDORSEMENTS.

The protection afforded by the required insurance policies under this Contract shall include, but shall not be limited to, the following:

1. Occurrence Based Policies. All required Liability insurance under this Contract shall be written on an "occurrence" form, except separately approved Professional Liability Policies.
2. Representation of Coverage Adequacy. By requiring insurance for this Contract, City does not represent or warrant that coverage and limits will be adequate to protect the Consultant, subcontractor, their agents or any project engineer.
3. Cross-Liability Coverage. If the Consultant's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
4. Cancellation. The insurer shall endeavor to give the Director of Public Works/City Engineer at least ten (10) days prior written notice of any suspension or cancellation of the policy, or any reduction in coverage or in limits. In addition, the Consultant shall immediately notify the Director of Public Works/City Engineer whenever it receives notice from the insurer that the policy has been cancelled or suspended or there has been a reduction in coverage or limits.

Cancellation or suspension of the policy or reduction in coverage or limits shall constitute a material breach and is grounds for immediate termination of the Contract. Upon notice to the Consultant by the City upon the City's learning of said breach, the Consultant shall immediately cease all Work on the Project.

5. Additional Insured's. The City, its officers (elected and appointed), employees, agents and volunteers must be named as additional insured's as their interests may appear on the Consultant's General Liability insurance policy. Additional insured status shall be endorsed onto the insurance policy by the appropriate ISO Endorsement Form approved by the City and executed by duly authorized agents of said carrier.
6. Primary Insurance. Consultant's insurance shall provide primary insurance to the City, to the exclusion of any other insurance or self-insurance programs the City may carry. Any insurance or self-insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute to it.
7. Waiver of Subrogation. Consultant waives all rights against the City, its officers, employees, agents and volunteers for recovery of damages to the extent these damages are covered by the insurance the Consultant is required to carry pursuant to this Contract.
8. Reporting. Failure to comply with any insurance policy reporting provisions shall not affect coverage provided to the City.
9. Cross Liability. The required insurance coverages shall apply separately to each insured against whom claim is made or suit brought, except with respect to the limits of the insurer's liability.
10. Indemnification. The policies shall contain an acknowledgement by the underwriters that, to the fullest extent permitted by law, the Consultant shall indemnify and save harmless the City against any and all claims resulting from

the wrongful or negligent acts or omissions of the Consultant or other parties acting on its behalf under the Contract; and that the hold harmless assumption on the part of the Consultant shall include all reasonable costs necessary to defend a lawsuit including actual reasonable attorney fees. The obligation to indemnify and defend the City as set forth herein shall survive the termination or completion of this Contract for the full period of time allowed by law. The parties agree that if any part of this indemnification provision is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be legally binding upon Consultant.

C. MINIMUM LIMITS AND OTHER PROVISIONS.

1. WORKER'S COMPENSATION INSURANCE.

Workers Compensation Insurance:

Wisconsin statutory limits for all employees of the bidder to whom the award is made.

All subcontractors and materialmen shall furnish to the Consultant and the City certificates of similar insurance for all of their respective employees, unless such employees are covered by the protection afforded by the Consultant.

2. GENERAL LIABILITY INSURANCE.

a. Coverage. Coverages must include, but are not limited to the following:
"Occurrence" Coverage Form must be as broad as Insurance Service Form (ISO) (form CG 00 01) and include the following:

- Premises and Operations
- Products and Completed Operations, applicable for at least three years following acceptance of the work

- Personal Injury with Employment Exclusion deleted
- Unlicensed Mobile Equipment
- Explosion, Collapse and Underground Hazard Coverages
- Blanket Contractual (Independent Consultant's Protective)
- Contractual Liability coverage at least as broad as coverage provided by the ISO CG 00 01 policy form must be included and shall not limit by any modification or endorsement, coverage for liabilities assumed by Consultant under this Contract.
- Broad Form Property Damage
- Contingent Coverage for Subcontractors
- Care, Custody and Control Coverages for City Owned or Purchased Materials at the Work Site

b. Minimum Limits of Liability:

Per Occurrence Limit:	\$1,000,000
Policy Aggregate Limit:	\$2,000,000
Personal Injury Limit:	\$1,000,000
Fire Damage Limit:	\$50,000
Medical Expense Limit:	\$5,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE.

- a. Coverage. Coverage must be as broad as ISO CA 00 01 - Occurrence Form Code No. 1, "any auto" and include the following:

Comprehensive Coverage for all Owned, Non-Owned or Hired Motor Vehicles driven by the employees of the Consultant or Subcontractors, including vehicles and equipment owned by the City if used exclusively for the project.

Uninsured or Underinsured Motorists Liability Coverage at full policy limits.

Transportation by insured vehicles of pollutants, or toxic wastes (as determined by the EPA) shall require a minimum of the Pollution Liability Endorsement (CA9948) and/or the Motor Carrier Act Endorsement (MCA90) to address damages and clean-up costs.

b. Minimum Limits of Liability:

Per Occurrence/Accident for Bodily Injury and Property Damage:
\$1,000,000

4. PROFESSIONAL LIABILITY/ERRORS & OMISSIONS COVERAGE.

a. Coverage. Standard form; coverage provided on a claims – made basis with at least three years extended reporting period; to include all liability assumed by Consultant for the project. The minimum three year extension shall be for at least three years after all operations and/or performance under this Contract are complete, and additional claims-made coverage requirements apply as described below:

For any coverage that is provided on a claims-made form (which type of form is permitted only where specified above):

1. The retroactive date must be shown and must be before the date of the Contract, and before the beginning of any operations and/or performance related to this Contract;
2. Insurance must be maintained and Certificates of Insurance must be provided to the City for at three years after termination or completion of the Contract or completion of the contract work;
3. If coverage is cancelled or not-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract, Consultant must purchase an extended reporting

period for a minimum of three years after termination of this Contract or completion of contract work.

b. Minimum Limits of Liability: Minimum \$1 Million (project specific).

5. UMBRELLA LIABILITY.

Five million dollars (\$5,000,000) following form excess of the primary General Liability, Automobile Liability and Employers Liability Coverages. If excess or umbrella policies are used to meet the Insurance Requirements of this section, they shall provide coverage at least as broad as specified for the underlying coverages, and the full limits of the umbrella or excess coverage shall be available to the City. Such policy or policies shall include as insured's those covered under the underlying policies, including additional insured's, with a severability of interests provision applicable to the additional insured's. Such policy or policies shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis to the City before the City's own primary liability policy or self-insurance shall be called upon to protect it as a named insured. Coverage shall apply on a "pay on behalf" basis.

IV. CONTRACT BONDS

After opening of bids, but before signing of contract, the bidder to whom award is made shall have executed, through a surety company authorized to do business in the state of Wisconsin and acceptable as surety to City, bonds in the form included in the contract documents for the faithful performance of the contract and payment for all work and labor performed and materials furnished to complete the work. The bonds shall be for the full amount of the contract and shall be adjusted to incorporate all extras, credits and change orders through final payment.

Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his Power of Attorney indicating the monetary limit of such power.

Bidder shall pay the cost of the bonds.

V. INTERPRETATIONS AND ADDENDA

All questions about the meaning or intent of the contract documents are to be directed to the City Engineer. Interpretations or clarifications considered necessary by the Engineer in response to such questions will be issued by addenda mailed or delivered to all parties recorded by the Engineer as having received proposal forms. Questions received less than ten (10) days prior to the date for opening of bids may not be answered. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

Addenda may also be issued to modify the contract documents, as deemed advisable by the Board of Public Works or the City Engineer.

NON -DISCRIMINATION STATEMENT

The City of West Allis does not discriminate against individuals on the basis of race, color, religion, age, marital or veteran's status, sex, national origin, disability, or any other legally protected status in the admission or access to, or treatment or employment in, its services, programs or activities.

LIMITED ENGLISH PROFICIENCY STATEMENT

It is the policy of the City of West Allis to provide language access services to populations of persons with Limited English Proficiency (LEP) who are eligible to be served or likely to be directly affected by our programs. Such services will be focused on providing meaningful access to our programs, services and/or benefits.

Rev 4/2014
SEP/kp
L:Scott/Contracts/Consultant ContractRev2014