

Request for Proposals (RFP)
Cuba City Brownfield Site Reuse Concept Planning
Wisconsin DNR – Remediation and Redevelopment Program
2023

I. Introduction

1. Project Background

The Remediation and Redevelopment Program (RR) at the Wisconsin Department of Natural Resources (DNR) is seeking proposals from qualified firms interested in providing consulting services to assist with the community engagement and visioning process for a soon-to-be vacant, large senior care and rehabilitation facility located in Cuba City, WI (the City). The senior care facility is a 9-acre site (the Property) with asbestos containing materials and other potential environmental conditions. The buildings will likely need to be torn down to make the site useable for future development.

The current owners of the senior care facility are offering to sell the site to the City for \$1 on the condition that they tear down and remediate any contamination. Before the City acquires the site, the goal is to create a plan for its future use. In the past, the DNR has responded to at least two hazardous substance discharge reports at this property: Southwest Health Care Center BRRTS # 09-22-292091 and Southwest Health Care BRRTS # 09-22-296367, which have been classified as No Action Required. See the attached map for approximate locations.

Cuba City is seeking assistance to explore options which would soften the impact of the loss of Epione Pavilion and prevent a large brownfield in its small community, which encompasses just 1.1 square miles. The City recently updated its comprehensive plan, completed two housing studies and an outdoor recreation plan. With these plans in place, the City is equipped to begin redevelopment planning but needs the capacity and assistance of an outside agency to complete this property-specific community engagement and visioning process. Cuba City wants to ensure that it generates a great deal of public input before determining the best next steps for the soon-to-be-vacant property. Cuba City seeks to optimize the use of this property to both serve the community and to enhance the momentum of the on-going revitalization efforts.

2. Funding and Grant Objectives

The DNR secured a FY23 Small Technical Assistance Grant from the U.S. Environmental Protection Agency (EPA) to assist the City with redevelopment planning at the Property. The objective of the grant is to complete a reuse concept study for the site that will help identify realistic, near-term redevelopment opportunities that make sense for the community.

Local resident participation and the sharing of ideas among community members and leaders will be a top priority for the project. Interested citizens, city staff, and other stakeholders will be actively involved in the study and in the identification of a preferred reuse concept for the Property. The study should ideally specify state, federal, and other financial aid opportunities the City can pursue for help with cleanup and redevelopment.

II. Scope

The opportunity for meaningful engagement and input from community members on the future of the Property is an important piece of a larger development effort in the City. This project builds on environmental work already completed at the Property, as well as the recently completed Cuba City Comprehensive Plan, available on the City's website.

The selected consultant will be required to provide a site concept plan for the Property that incorporates previously completed work, new analyses, and community engagement results – to assist the redevelopment efforts of the City. Specific tasks of this project include:

Task 1: Project Coordination

Project coordination will consist of working with the assigned DNR project coordinator, Candi Quandt, the DNR technical contact, Issac Ross, and the Cuba City director of public works, George Morrissey. This will include regular meetings to update and review work proposed, in process and completed. A schedule of meetings and deliverables will be discussed and determined by the selected consultant, the City and the DNR. The selected consultant and those identified above will be known as the Project Coordination Team.

Task 2: Reuse Assessment

This task should be designed to help the City determine the feasibility of possible reuses for the Property that will meet the community's health, environmental, and economic goals. Items to be considered include:

- existing condition of the Property and surrounding land uses
- potential new uses being considered for the Property
- potential buyers of the Property, if any
- consistency with existing community development plans
- opportunities and constraints
- existing level of support from City officials, residents, and other stakeholders
- analysis of access to labor and markets
- infrastructure needs
- data gaps
- historic preservation and cultural resources considerations
- financial costs and feasibility

Task 3: Community Engagement

This task should be designed to gather community input on possible reuses for the Property and include at least two public meetings, ideally with virtual and in person options. DNR staff will assist with planning and coordinating public meetings. Key stakeholders and potentially interested parties should be invited to participate. Additional activities under this task **may** include:

- Advertisement for meetings
- development of outreach materials
- a community needs assessment or survey
- presentations and/or meetings with elected officials
- a design charrette
- social media presence and information-sharing posts
- Ads in local newspapers and direct mailings

Task 4: Site Concept Plans and Implementation Strategies

This task should include the development of at least two alternate site concept plans for presentation to

the public. After considering public input and integrating it into the Property reuse concept plans, the Project Coordination Team will meet to finalize findings and recommendations for presentation to Common Council and other City officials. Final Property concept plans should include:

- Graphic (plan and elevation) representation and a narrative of redevelopment concepts;
- Graphic representation and a narrative of needed infrastructure (including stormwater and floodplain) upgrades to support selected redevelopment concepts; and
- Narrative of implementation strategies including financial costs, feasibility, and available financial assistance tools and opportunities.

Final Deliverables

The final deliverables, which will be included in the DNR’s report to the U.S. EPA as part of the DNR’s grant closure documentation, should consist of:

- The monthly summaries of activities completed by the selected consultant and delivered to the Project Coordination Team by the 15th day of the following month for each month the project.
- Copy of all materials produced related to the project (e.g., community engagement materials, reports, presentations, plans).

III. Schedule

Key approximate dates of the process are listed below.

Anticipated Procurement (dates may be subject to change at the discretion of the DNR.)

October 19, 2023	RFP available date
November 1, 2023	Deadline for submitting written questions
November 6, 2023	Deadline for DNR to provide answers to written questions
November 20, 2023 at 4:00 PM	Proposals due date
Week of November 27 th	Review of Proposals
By November 30, 2023	Contract award
By August 30, 2024	Deliverables Due

Grant Schedule

October 1, 2023	Grant period begins
April 1, 2024	Mid-Year Report due
September 30, 2024	Grant period ends

IV. Proposal Submittal Format

To simplify the DNR’s review process and to obtain the maximum degree of comparability, proposals should be submitted in the following sequence/format. Failure to comply with these requirements may be cause for the proposal to be considered nonresponsive and not receive further consideration. Please submit via email with all documents saved as PDFs.

- 1. Letter of Transmittal (maximum of 2 pages):** This letter should be signed by the proposed Project Manager and one Principal, and should state concisely, in less than two pages, the proposer’s understanding of the work to be performed, and the unique abilities of the firm to perform the work most effectively for the DNR.
- 2. Title Page (1 page):** The title page should state that it pertains to:

Request for Proposal (RFP)
 Cuba City Brownfield Sites Reuse Concept Planning
 Wisconsin DNR – Remediation and Redevelopment Program
 2023

The title page must include the name of the proposing firm, address, telephone number, name and email address of the proposed Project Manager, and the submittal date.

3. **Table of Contents:** The table of contents should identify the submittal by section, and the beginning page number of each section.
4. **Firm Profile (maximum of 2 pages):** In this section, describe, in less than two pages, the firm and the range of services that the firm provides directly related to this RFP. Emphasis should be on experience with brownfields redevelopment site planning, community engagement, and work with small communities. In addition, include specific experience working with U.S. EPA 104(k) brownfields grants. This section should directly reflect the required qualifications as listed in section VI of this RFP.
5. **Qualifications (maximum of 3 pages):** In less than three pages, describe the pertinent qualifications of the proposed project manager and the proposed project team. Two-page maximum resumes for key members of the project team, including the project manager, should be included in addition to the three pages of qualification information. Describe the experience and success of key personnel working on similar projects.
6. **References:** Include at least three client references for the firm (including individual name, telephone numbers, and email addresses) from similar projects that have been completed in the last five years.
7. **Project Understanding and Scope:** This section should provide a detailed description in both narrative and graphic form as necessary that demonstrates the firm’s understanding related to the objectives of the project and outlines how the firm would propose to accomplish the tasks outlined in this RFP given the funding and time constraints.
8. **Cost Detail and Fees: The maximum available budget for this project is \$20,000.**
 Please provide basic fee information in a line-item format that includes:
 - a. Hourly rates, by any personnel that may be working on the project including administrative staff (include name and title).
 - b. Indirect or overhead fees.
 - c. Travel, per diem rates; and
 - d. Supply rates including printing and field supplies.

To fairly compare proposals, in addition to basic fee information, all firms should also submit cost proposals in task format as shown below:

Task	Estimated Cost
Task 1. Project Coordination	
Task 2. Reuse Assessment	
Task 3. Community Engagement	
Task 4. Site Concept Plans and Implementation Strategies	

Total	
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Quotation of fees and compensation shall remain firm for a period of at least two months (2) from the submission of the proposal. The DNR reserves the right to negotiate fees with the selected firm prior to execution of a contract. If the DNR and selected firm cannot agree, the DNR may choose to select another firm. **Firms are encouraged to propose innovative techniques and concepts for accomplishing the goals of this RFP to maximize use of the limited budget.**

- 9. Project Timeline:** The consultant shall provide a schedule for the work tasks and deliverables set forth in this RFP. The project must be completed and billed no later than **August 30, 2024**. Please include a statement of the firm’s ability to begin the project in **December 2023** and the capacity of the firm with respect to other projects that are under contract that may affect the timely completion of the work outlines in this RFP. The anticipated project timeline is below:

Anticipated Project Schedule

December 1, 2023	Contract period begins
By end of January 2024	Convene initial public meeting
By end of February 2024	Begin development of concept plans
By end of May 2024	Host public open house to gather feedback on site concepts
By end of July 2024	Present final concept plans to Common Council
By August 30, 2024	Provide copies of all final deliverables to Project Coordination Team and billing to DNR

- 10. Federal Requirements:** State the firm’s status as a Disadvantaged Business Enterprise (DBE) or non-DBE. If claiming DBE status, include a valid certification with the RFP response.

V. Proposal Submittal Requirements

Electronic submittals are preferred. Firms must submit their proposals in accordance with the following requirements:

1. The proposal document must be signed by an officer of the firm who is authorized to legally bind the firm.
2. Firms may submit their proposals any time prior to the closing date and time. **Proposals must be received no later than 4:00 P.M. (CST) on November 20, 2023, by Candi Quandt at Candice.quandt@wisconsin.gov .**
3. Proposals may not be more than 10MB in size.

VI. Contractor Qualifications and Award Criteria

The contractor selected for this project must have proven experience in brownfields redevelopment planning. Proposals will be screened to ensure that they have met the minimum requirements of the proposal format as outlined in section V. A selection committee of DNR personnel will review remaining qualifying proposals. The following criteria are among those that will be used to evaluate qualifying proposals:

1. The firm and proposed project team's level of professional competence and proven track record of:
 - brownfields reuse planning;
 - conducting community engagement activities; and
 - developing redevelopment strategies and recommendations.
2. The quality of the proposal based on the:
 - demonstrated understanding of the project's overall objectives;
 - proposed activities and schedule to complete the goals of the project;
 - demonstrated expertise in completing similar projects; and
 - level of interest.
3. Proposed fee schedule in relationship to the services offered.

After evaluation of proposal, the DNR may choose to invite two to three top-ranked firms to a virtual or in person interview. The purpose of the interview is to gather additional information to evaluate firms on their abilities to provide the services requested by this RFP, and to discuss the firm's proposed approach to interacting with the DNR and city while providing those services. Firms must be available, in person or virtually, for these follow-up interviews at the DNR's or City's facilities on specific dates and times. If interviews are held, both the original submitted proposal and the results of the interviews may be used to evaluate firms.

VII. Contract Requirements

The selected consultant will be provided with a copy of the DNR's standard Professional Services Contract as shown in Attachment I, and the EPA Grant Terms and Conditions as shown in Attachment II. If the firm cannot agree with the DNR's contract provisions or the EPA Terms and Conditions, the DNR may choose to select another consultant. The DNR will not negotiate contract language.

1. **Contract Award and Effective Date:** The effective date of the contract shall be the date indicated in the period of agreement section of each executed contract and shall run for one year from that date. Contractual commitments are contingent upon the availability of funds, and the requirements of the site. All contracts are subject to the approval of the DNR's legal counsel, and the DNR Secretary's office prior to execution. Once awarded, the contract will be the final expression of the agreement between the parties and may not be altered, changed or amended except by mutual agreement, in writing.
2. **Eligible Program Costs:** The firms that submit their qualifications to the DNR under this RFP do so recognizing the following specific contract requirements:
 - A. **Administrative Costs:** Eligible programmatic costs include costs for contractual support if those costs are *reasonable and allocable* to tasks specified in an approved scope of work for carrying out the activities. The contractor's indirect costs that are otherwise reasonable (i.e., 10% or less based on the DNR's preference) and normally charged to cost reimbursement contracts allowable under this funding source.
 - B. **Copyrighted Material:** No documents or information that is developed and paid for under this contract for the DNR may be copyrighted by any environmental consultant. The copyrighted materials conditions in Attachment I and II also apply.
 - C. **Utilization of Small, Minority and Women's Business Enterprises:** The selected consultant shall make every effort to award a minimum of 5% of the work to minority business enterprises.

The selected consultant will be required to submit a report to the DNR which will identify the minority business enterprises to whom the work was awarded and the value of said work. A current list of minority business enterprises may be obtained from the State of Wisconsin Department of Administration Minority (MBE) and Disabled Veteran Owned Business (DVB) Certification Program.

Minority Business Certification Program
101 E Wilson St, 6th Floor
PO Box 7970
Madison, WI 53707
Tel: (608) 267-9550
Email: SupplierDiversity@wi.gov

Minority Business Enterprise (MBE) means: "a sole proprietorship, partnership, joint venture, or corporation which is certified by the Wisconsin Department of Development to be 51% owned, controlled and actively managed by a Black, Hispanic, American Indian, Eskimo, Aleut, Native Hawaiian, Asian Indian, or a person of Asian-Pacific origin. The business must also be currently performing a useful business function."

VIII. **Other**

1. **Rejection:** The DNR reserves the right to reject any and all proposals, to waive any informality in the proposals that are received, to accept or reject any or all items in the proposal, and to award a contract to a firm in whole or in part. Moreover, the DNR reserves the right to make no selection if the proposals are deemed to be outside the fiscal constraint or not in the best interests of the DNR.
2. **RFP Questions:** The deadline for submitting written questions regarding this RFP is no later than **November 1, 2023**. Questions are to be submitted to Candi Quandt via e-mail at Candice.quandt@wisconsin.gov. Questions submitted by telephone will not be accepted. Answers to the written questions submitted will be posted by **November 6, 2023**. **Questions submitted after the November 1, 2023, deadline will not be considered (no exceptions)**. It is the responsibility of the respondent, to ensure that all information requested has been included in the proposal. Respondents are specifically directed not to contact any DNR staff for questions, meetings, conferences or technical discussions that are related to this RFP, except as outlined above. Unauthorized contact with any DNR personnel will be cause for rejection of the proposal.
3. **Incurred Costs:** Those vendors submitting proposals do so entirely at their own expense. There is no expressed or implied obligation by the DNR to reimburse any individual or firm for any costs incurred in preparing or submitting responses, for providing additional information when requested by the DNR, or for attending and/or participating in any follow-up interviews and negotiation sessions.
4. **Confidential Matters: Vendor Data:** If any information submitted in the proposal is considered confidential or proprietary, the respondent must identify this information by completing and including the Designation of Confidential and Proprietary Information with their proposal, in accordance with statutory requirements.
5. **Assignment:** The respondent may not reassign any portion of the work that is accepted as a result of this RFP, without prior written consent from the DNR.

Attachment I

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Madison, Wisconsin

THIS AGREEMENT is made and entered into by and between the State of Wisconsin, hereinafter called the “State”, by its Department of Natural Resources, hereinafter called the “Department”, executing this Agreement, and **INSERT NAME OF CONSULTANT HERE**, hereinafter called the “Consultant”, for the work included in the Consultant’s Proposal based on the Department’s Scope of Work, both specified in Section 34 of the General Terms and Conditions below. Costs for the work shall be reimbursed in accordance with the attached proposal up to a maximum agreed amount NOT TO EXCEED \$**INSERT DOLLAR AMOUNT IN NUMBERS HERE** (**INSERT DOLLAR AMOUNT IN WORDS HERE** Dollars).

For administrative purposes a contingency fund of \$**INSERT CONTINGENCY AMOUNT IN NUMBERS HERE** (**INSERT CONTINGENCY AMOUNT IN WORDS HERE** Dollars) is approved for use on this project. The contingency fund may be used only with the prior approval of the Department and at the sole discretion of the Department. This contingency fund is not a part of the maximum NOT TO EXCEED amount agreed upon for the services in the proposal.

WITNESSETH

WHEREAS, the Department proposes development of a project, hereinafter named the “Project”, which is described as follows: **INSERT DESCRIPTION OF PROJECT HERE.**

WHEREAS, the Department deems it advisable to engage the services of a Consultant to furnish professional services in connection with the Project.

WHEREAS, the Department has authority as provided in Section 23.41 of the Wisconsin Statutes to engage such services.

WHEREAS, the Consultant has signified its willingness to furnish services for the Department.

NOW THEREFORE, in consideration of these premises and their mutual and dependent agreements, the parties hereto agree as set forth in the following pages which are annexed hereto and made a part hereof. (Pages 1 to **INSERT LAST PAGE OF CONDITIONS HERE**, inclusive.)

IN WITNESS WHEREOF, the Department and the Consultant have executed this AGREEMENT.

INSERT NAME OF CONSULTANT HERE

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

By _____
Christine Sieger, Program Director,
Remediation and Redevelopment

Title _____

Date _____

Date _____

GENERAL SERVICES AGREEMENT
GENERAL TERMS AND CONDITIONS

- | | |
|---|--|
| 1. Affirmative Action. | 23. Ownership of Documents. |
| 2. Antitrust Assignment. | 24. Ownership of Wastes. |
| 3. Applicable Law. | 25. Payments. |
| 4. Approvals or Inspections. | 26. Payment Terms and Invoicing. |
| 5. Assignment. | 27. Period of Agreement. |
| 6. Cancellation; Termination | 28. Project Management. |
| 7. Change Orders. | 29. Records, Access. |
| 8. Deduction for Uncorrected Work. | 30. Rejection of Defective Materials. |
| 9. Deliverables. | 31. Release of Information. |
| 10. Disclosure. | 32. Request for Payment; Progress Reports. |
| 11. Dispute Resolution. | 33. Safety. |
| 12. Entire Agreement; Amendments. | 34. Scope of Services to be Provided. |
| 13. Extra Work and Special Cases. | 35. Site Access |
| 14. Force Majeure. | 36. Data |
| 15. Guaranteed Delivery. | 37. Standard of Performance. |
| 16. Indemnification; Liability. | 38. Survival. |
| 17. Independent Contractor. | 39. Successors and Assigns. |
| 18. Insurance. | 40. Tax Delinquency. |
| 19. Inventions, Patents, Trademarks and Copyrights. | 41. Taxes. |
| 20. Late Penalties. | 42. Testimony. |
| 21. No Waiver of Conditions. | 43. Titles. |
| 22. Nondiscrimination. | 44. Warranty. |

THE CONSULTANT shall provide professional services for the Project in accordance with the terms and conditions of this Agreement.

1. AFFIRMATIVE ACTION. If the amount of this Agreement is \$25,000 or more, the Consultant agrees to submit a written affirmative action plan to the Department within 15 business days after the Agreement commences if an acceptable plan is not already on file with the State of Wisconsin. (Consultants with an annual work force of fewer than 25 employees are exempted from this requirement.) Failure to comply with the conditions of this clause may result in the Consultant being declared an “ineligible” contractor, termination of the Agreement, or withholding of payment

2. ANTITRUST ASSIGNMENT. The Consultant and the Department recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Department. Therefore, the Consultant hereby assigns to the Department any and all claims for such overcharges as to goods, materials or services purchased in connection with this Agreement.

3. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of 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.

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

5. ASSIGNMENT. Neither this Agreement nor any right or duty in whole or in part by the Consultant under this Agreement may be assigned, delegated or subcontracted without the written consent of the Department.

6. CANCELLATION; TERMINATION.

- A.** The Department reserves the right to cancel this Agreement in whole or in part, without penalty, due to non-appropriation of funds or for the failure of the Consultant to comply with terms, conditions, or specifications of this Agreement.
- B.** The Department 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 Department shall pay the Consultant for that portion of the work satisfactorily performed prior to the date of termination.
- D.** If this Agreement is canceled or terminated by the Department 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 Department 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.

7. CHANGE ORDERS

- A.** A change order is a written order to the Consultant signed by the Department, issued after the execution of this Agreement, authorizing a change in the work or an adjustment in the Contract Sum or the Contract Time. Change Orders may be initiated by either party at any time.
- B.** Changes in work shall be within the general scope of the Agreement, consisting of additions, deletions or other revisions; the Contract Sum and the Contract Time being adjusted accordingly. Complete documentation of additional work, cost changes, and contract time shall be provided to the Department by the Consultant.
- C.** No adjustments to the Contract Sum or the Contract Time may be made for any changes performed by the Consultant that have not been ordered by the Department.

8. DEDUCTION FOR UNCORRECTED WORK.

If the Department deems it expedient to accept defective work or work not performed in accordance with the Agreement, the difference in value, together

with a fair allowance for the damages, may be deducted from the payments that are owed to the Consultant under this Agreement.

9. DELIVERABLES. Deliverables are defined as those items included in the Agreement's time schedule.

10. DISCLOSURE. If a state public official (as defined under Section 19.42, Wisconsin Statutes), a member of a state public official's immediate family, or any organization in which a state public official or a member of the official's immediate family owns or controls a 10% interest, is a party to this Agreement, and if this Agreement involves payment of more than \$3,000 within a 12 month period, this Agreement is voidable by the State unless appropriate disclosure is made according to Section 19.45(6), Wisconsin Statutes, before signing the Agreement. Disclosures shall be made to the State of Wisconsin Ethics Board, 44 E. Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608 266-8123).

11. DISPUTE RESOLUTION. In the event that a dispute arises between the Department's project manager and the Consultant's project manager, either party may request a conference between the Department's Director of the Bureau for Remediation and Redevelopment and the Consultant's project manager's supervisor (or designee) to resolve the dispute.

12. ENTIRE AGREEMENT; AMENDMENTS.

This Agreement, together with the specifications in the proposal and referenced parts and attachments, shall constitute the entire agreement 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.

13. EXTRA WORK AND SPECIAL CASES. If the Department desires to have the Consultant perform work or render services in connection with the project, other than provided for by the expressed intent of this Agreement, this will be considered as Extra Work, subject to a change order, or extension to this Agreement, setting forth the nature and scope thereof and the compensation therefore as determined by mutual agreement between the parties. Work under a change order or extension may not proceed unless and until it is authorized by the Department.

14. FORCE MAJEURE

- A.** The Consultant shall cause all of its work to be performed within the time limits set forth in this Agreement unless performance is delayed by

events that constitute a force majeure. For purposes of this Agreement, a “force majeure” is an event which is not foreseeable, is beyond the control of the Consultant and delays performance of any obligations required by this Agreement, including, but not limited to, delays caused by the Department, delays in obtaining property access or delays in obtaining any necessary permit or license after a complete application is made.

- B. The Consultant shall notify the Department in writing no later than 5 calendar days after the discovery of any event which the Consultant contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Consultant to minimize the delay, and the timetable by which these measures will be implemented. The Consultant shall have the burden of demonstrating that the event is a force majeure. The Department shall promptly provide the Consultant with a written decision as to whether and why the event does or does not constitute a force majeure after receiving notification from the Consultant. If the Consultant does not agree with the findings of the Department project management staff, then a conference with the Department’s Director of the Bureau for Remediation and Redevelopment will be arranged with the Consultant to resolve the force majeure issue.
- C. If the Department agrees that a delay is attributable to a force majeure, the time period for a performance under this Agreement shall be extended for a reasonable time period attributable to the event constituting a force majeure.

15. GUARANTEED DELIVERY. Failure of the Consultant to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Consultant liable for all costs in excess of the Agreement price when alternate procurement is necessary. Excess costs shall include the Department’s administrative costs.

16. INDEMNIFICATION; LIABILITY

- A. The Consultant agrees to save, keep harmless, defend and indemnify the State, the Department and all their officers, employees and agents, against any and all liability, claims and costs for injury to or death of any person or persons, and for loss or damage to any property (state or other) caused by or arising out of any willful misconduct, negligent act, error or omission by the Consultant or any of its agents, representatives, subcontractors or employees occurring in connection with or in any way incident to or arising out of performance of this

Agreement. This PARAGRAPH does not apply to liability, claims and costs to the extent that they result from the willful misconduct, negligent act, error or omission of the State, the Department or their officers, employees or agents.

- B. The Department recognizes and agrees that its employees are subject to liability as provided by Sections 893.82 and 895.46, Wisconsin Statutes. Therefore, its employee will be liable for their acts under these provisions and will not be acting on behalf of or as agents of the Consultant.
- C. The Consultant guarantees that the use of equipment incorporated into the Project will not infringe any United States patent, and likewise that the use of any method in conjunction with the Project will not infringe any United States patent. The Consultant agrees that it will at its own expense defend every law suit which shall be brought against the State of Wisconsin for any alleged infringement of any patent and agrees that it will pay all costs, damages, and profits recoverable in any such suit. The Department agrees to promptly notify the Consultant of any such suit and deliver all papers relating to such suit to the Consultant.

17. INDEPENDENT CONTRACTOR. The Department 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 Department 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 Department 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 Department further agrees that it will exercise no control over the selection and dismissal of the Consultant’s employees or agents.

18. INSURANCE. The consultant performing services for the State of Wisconsin shall:

- A. Maintain workers compensation insurance for all employees engaged in the work
- B. Maintain commercial liability and property damage insurance against any claim(s) which might occur in carrying out this Agreement. Minimum coverage shall be \$2,000,000 liability for bodily injury and property damage including products liability and completed operations.
- C. Provide motor vehicle insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Agreement. Minimum coverage shall be \$2,000,000 per occurrence combined single limit for automobile liability and property damage.
- D. Provide an insurance certificate indicating this

coverage, counter-signed by an insurer licensed to do business in Wisconsin, covering the period of the Agreement. The insurance certificate is required to be presented prior to commencement of the Agreement.

- E. The State reserves the right to require higher or lower limits where warranted.

19. INVENTIONS, PATENTS, TRADE-MARKS AND COPYRIGHTS

- A. The Consultant hereby assigns to the Department the entire right, title and interest for the entire world in and to all work performed, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions made, conceived or reduced to practice or authored by the Consultant or the Consultant's employees, either solely or jointly with others, while performing this Agreement or with use of information, materials or facilities of the Department received or used by the Consultant during the period in which the Consultant is retained by the Department or its successors under this Agreement or any extensions or renewals of this Agreement.
- B. The Consultant shall promptly disclose to the Department all works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions made, conceived or reduced to practice or authored by the Consultant or the Consultant's employees in the course of the performance of this Agreement.
- C. The Consultant shall sign, execute and acknowledge or cause to be signed, executed and acknowledged without cost, but at the expense of the Department, any and all documents and to perform such acts as may be necessary, useful or convenient for the purpose of securing to the Department or its nominees, patent, trademark or copyright protection throughout the world upon all such works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions, title to which the Department may acquire in accordance with the provisions of this SECTION.
- D. The Consultant has acquired or shall acquire from each of its employees the necessary rights to all such works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions made by such employees within the scope of their employment by the Consultant in performing services under this Agreement. The Consultant shall obtain the cooperation of each such employee to secure to the Department or its nominees the rights to such works, writings, formulas, designs, models, drawings, photographs, design inventions and other inventions as the Department may acquire

in accordance with the provisions of this SECTION.

20. LATE PENALTIES

- A. The Consultant shall be liable for the payment of penalties to the Department of 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 Department determines that such delay is attributable to a force majeure as defined in SECTION 14., above, or a different schedule is agreed to by the parties, in writing, before the date the report or document is due. Penalties, if applicable, shall be due and payable by the Consultant within 15 calendar days of receipt of notification from the Department assessing the penalties. These penalties shall accrue in the amount of \$500 for the first week and \$1,000 for each week thereafter, for each report or document which is overdue. The Department may subtract penalties which accrue under this SECTION from payments that are owed to the Consultant under this Agreement.
- B. Assessment of penalties under this SECTION does not preclude the Department 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 Department may at its sole discretion, in whole or in part, waive its right to penalties otherwise due under this SECTION.

21. 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.

22. NONDISCRIMINATION. In connection with the performance of work under this Agreement, the Consultant agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 51.01(5), Wisconsin Statutes, sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Consultant further agrees to take affirmative action to ensure equal employment

opportunities. The Consultant agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause. Failure to comply with the conditions of this clause may result in the Consultant being declared an “ineligible” contractor, termination of the Agreement, or withholding of payment.

23. OWNERSHIP OF DOCUMENTS. Upon completion of the services provided for in this Agreement, or upon payment for services as provided for in SECTION 7, all specifications, charts, sketches, drawings and other documents, whether finished or not, shall become the property of the Department.

24. OWNERSHIP OF WASTES. The Department acknowledges that the Consultant is not, by virtue of this Agreement, the owner of any waste materials generated as a result of the services performed by the Consultant under this Agreement.

25. PAYMENTS. A. The Consultant shall be paid by the Department for the completed work or services rendered under this Agreement at the price set forth elsewhere in the Agreement, and for “Extra Work”, if any, at the compensation set forth in the approved orders covering the Extra Work.

B. Such payment shall be full compensation for work performed or services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.

26. PAYMENT TERMS AND INVOICING. A. Payment shall be considered timely if the payment is mailed, delivered, or transferred by the later of the following:

A. The date specified on a properly completed invoice for the amount specified in the order or Agreement, or

B. Within 30 days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or Agreement or within 30 days after receipt of an improperly completed invoice or receipt and acceptance of the property or service under the order of Agreement, whichever is later if the Department does not notify the sender of receipt of an improperly completed invoice within 10 working days after it receives the invoice of the reason it is improperly completed.

27. PERIOD OF AGREEMENT. This Agreement shall commence upon its signing by both parties (including approval by the Governor of the State if required) and shall follow the schedule developed in the proposal, during which period all performance as described in this Agreement shall be fully completed to the satisfaction of the Department.

28. PROJECT MANAGEMENT. The Department’s project manager for this project is Xiaochun Zhang, located in the Department’s Central Office in Madison. The Consultant has identified INSERT NAME OF CONSULTANT’S PROJECT MANAGER HERE as its project manager. If either the Consultant or the Department changes its project manager for this project, notification of this change shall be sent to the other party within 10 days of such a change with the name of the new project manager included.

29. RECORDS, ACCESS. The Consultant shall, for a period of 3 years after completion and acceptance by the Department, maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used in the preparation or support of the cost submission in effect on the date of execution of this Agreement and a copy of the cost summary submitted to the Department. The Department, its agents and duly-authorized representatives shall have access to such books, records, documents, and other evidence for the purpose of inspection, audit and copying. The Consultant shall provide proper facilities for such access, inspection and copying. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such dispute, appeal, litigation, claim or exception. The Consultant shall notify the Department prior to destroying any records.

30. REJECTION OF DEFECTIVE MATERIALS. The Department may reject materials and workmanship which are defective or it may require their correction. Rejected workmanship shall be satisfactorily corrected, and rejected materials shall be removed from the Project site without charge to the Department. If the Consultant does not correct such condemned work and remove rejected materials within a reasonable time, fixed by written notice, the Department may remove them and charge the expense to the Consultant.

31. 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 Department.

32. REQUEST FOR PAYMENT; PROGRESS REPORTS. The Consultant shall submit invoices to

the Department on a monthly basis during the progress of the work for partial payment on account, for the work completed and accepted to date. Pay request formats shall match as closely as possible to the cost proposal format. Each category from the cost proposal shall detail, by task, the hours and costs of each staff level. All invoices detailing the Consultant's work and subcontracted work shall be attached. Copies of all staff time sheets or summary time data used to invoice pay requests should be attached to the invoice. Unless the Department directs otherwise, all receipts for equipment, materials and other expenses shall be attached to the pay request. The pay request along with a monthly progress report shall be sent directly to the Department's project manager.

33. SAFETY. The Consultant shall initiate, maintain and provide coordination of safety precautions and programs 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 Department as separate consultants or contractors. The Department agrees to require any such separate consultants or contractors 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.

34. SCOPE OF SERVICES TO BE PROVIDED. Subject to the terms and conditions set forth in this Agreement, the Department engages the Consultant to furnish the services specifically described in the Consultant's Proposal entitled: **INSERT TITLE OF THE PROPOSAL HERE** dated **INSERT DATE OF PROPOSAL HERE**, based on the Department's Scope of work, entitled: **INSERT TITLE OF SCOPE OF WORK HERE** dated **INSERT DATE OF SCOPE OF WORK HERE**, and for such other tasks as may be mutually agreed upon in writing between the Consultant and the Department. The Consultant's Proposal and the Department's Scope of Work are incorporated into this Agreement by reference and are made a part of this Agreement.

35. SITE ACCESS. Unless the Scope of Work included in Exhibit "A" provides otherwise, the Department shall obtain or provide reasonable access for the Consultant to the Project site when necessary and at any reasonable time requested.

36. DATA. The Department 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 Department assumes no responsibility for its accuracy,

reliability or completeness.

37. 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.

38. 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.

39. SUCCESSORS AND ASSIGNS. The Department 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.

40. TAX DELINQUENCY. Consultants which have a delinquent Wisconsin tax liability may have their payments offset by the State.

41. TAXES. The Department is required to pay the Wisconsin excise or occupation tax on its purchase of beer, liquor, wine, cigarettes, tobacco products, motor vehicle fuel and general aviation fuel. However, it is exempt from payment of all federal tax and Wisconsin sales or use tax on its purchases. The State of Wisconsin has issued tax exempt number ES 40690 to the Department. The Department may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Consultants performing construction activities are required to pay state use tax on the cost of materials.

42. TESTIMONY. The Consultant shall make its employees available to testify at administrative hearings and in court on behalf of the Department regarding the work conducted under this Agreement. Any costs associated with such testimony shall be billed to the Department on an itemized invoice. The hourly rates charged for testifying and for travel to and from the hearing or court proceeding may not exceed the rates listed on the Consultant's Classification Rate Schedule in effect at the time that the testimony is given.

43. 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.

44. WARRANTY. With respect to any construction

work or construction activities performed under this Agreement, except where a longer warranty period is provided by the manufacturer or supplier of any equipment or materials, the Consultant warrants that for one year the work will be free from defects in material or workmanship and that all construction services and material furnished shall be in accordance with the Department's specifications or the proposal. This warranty shall survive acceptance and payment and shall not be exclusive. Manufacturers' warranties received by the Consultant which are applicable to any items furnished by the Consultant shall survive

acceptance and payment, and shall run to the Department, its successors and assigns, and may not be exclusive. The Consultant shall obtain any warranties which vendors, contractors and subcontractors would give in normal commercial practice. At the Department's option, the Consultant shall either promptly repair or replace defective items and work after receipt of the Department's written notice of a defect.

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