



MARATHON COUNTY HUMAN RESOURCES, FINANCE & PROPERTY COMMITTEE MEETING AGENDA

Date & Time of Meeting: **Tuesday, May 25, 2021 4:00 p.m.**

Meeting Location: **Marathon County Courthouse, County Board Assembly Room 500 Forest Street, Wausau WI 54403**

Members: John Robinson, Chair; Alyson Leahy, Vice-Chair; Craig McEwen, Kurt Gibbs, Yee Leng Xiong, Jonathan Fisher, EJ Stark

Marathon County Mission Statement: *Marathon County Government serves people by leading, coordinating, and providing county, regional, and statewide initiatives. It directly, or in cooperation with other public and private partners, provides services and creates opportunities that make Marathon County and the surrounding area a preferred place to live, work, visit, and do business. (Last updated: 12/20/05)*

The meeting site identified above will be open to the public. However, due to the COVID-19 pandemic and associated public health directives, Marathon County encourages Public Safety Committee members and the public to attend this meeting remotely. Instead of attendance in person, Committee members and the public may attend this meeting by **telephone conference**. If Committee members or members of the public cannot attend remotely, Marathon County requests that appropriate safety measures, including adequate social distancing, be utilized by all in-person attendees.

Persons wishing to attend the meeting by phone may call into the **telephone conference beginning five (5) minutes prior to the start time indicated above using the following number:**

Phone#: 1-408-418-9388

Access Code: 146 078 0067

When you enter the telephone conference, **PLEASE PUT YOUR PHONE ON MUTE!**

1. **Call Meeting to Order**
2. **Public Comment Period**
3. **Approval of the Minutes of the May 11, 2021 Human Resources, Finance and Property Committee Meeting**
4. **Educational Presentations/Outcome Monitoring Reports**
 - A. American Rescue Plan-Update
 - a. Public Engagement Process
5. **Operational Functions required by Statute, Ordinance, or Resolution:**
 - A. Discussion and Possible Action by Human Resources and Finance and Property Committee
 1. None
 - B. Discussion and Possible Action by Committee to Forward to the County Board for its consideration
 1. Interdepartmental Budget Transfers
 - a) Finance Department-American Rescue Plan Act Coronavirus-State and Local Recovery Funds Act
 - b) Medical Examiner-Morgue Space Needs Study
 2. Review of Marathon County Procurement Code; Discussion Regarding Possible Amendment or Repeal and Creation of New Code-From April 27 meeting
 3. Approve City County Information Technology Commission Updated Intergovernmental and New Operating Agreement-Klein
6. **Policy Issues Discussion and Committee Determination**
 - A. None
7. **Announcements:**

Next Meeting Date-**June 8, 2021 at 3:30 p.m.**
8. **Adjourn**

Any person planning to attend this meeting who needs some type of special accommodation in order to participate should call the County Clerk's Office at 715 261-1500 or e-mail inforamathon@mail.co.marathon.wi.us one business day before the meeting.

SIGNED J Robinson/s/K Palmer
Presiding Officer or Designee
NOTICE POSTED AT COURTHOUSE

FAXED TO: Wausau Daily Herald, City Pages, and
FAXED TO: Other Media Groups, Record Review
FAXED BY: K. Palmer
FAXED DATE: 5/21/2021 at 12:15 pm
FAXED TIME: _____

BY: K. Palmer
DATE: 5-21-2021 at 12:15 pm
TIME: _____

Posted to the County Website: <https://www.co.marathon.wi.us/Home/Calendar.aspx>



MARATHON COUNTY HUMAN RESOURCES, FINANCE & PROPERTY COMMITTEE
MEETING MINUTES unapproved minutes

Date & Time of Meeting: **Tuesday, May 11, 2021 3:30 p.m.**

Meeting Location: **Marathon County Courthouse, County Board Assembly Room 500 Forest Street, Wausau WI 54403**

Members: John Robinson, Chair; Alyson Leahy, Vice-Chair; Craig McEwen, Kurt Gibbs, Yee Leng Xiong, Jonathan Fisher, EJ Stark

WebEx/Marathon County Courthouse, County Board Assembly Room 500 Forest Street, Wausau WI 54403

Members	Present/Web-Phone	Absent
Chair John Robinson	P	
Vice Chair Alyson Leahy	W	
Craig McEwen	W	
Kurt Gibbs	P	
Yee Leng Xiong		X
Jonathan Fisher	W	
EJ Stark	W	

Also Present: Connie Beyersdorff, Steve Cherek, Lance Leonhard, Jason Hake, Scott Corbett, Mike Puerner, Kim Trueblood
VIA Web or Phone: Kristi Palmer, Tom Lovlein, Jim Griesbach, Jamie Polley, Molly Adzic, Attorney Esponoz with Habitat for Humanity, Jason Hausler, Jean Maszk, Dejan Adzic, Kim Trueblood

1. **Call Meeting to Order**-Chairman Robinson called the meeting to order at 3:30pm
2. **Public Comment Period**-None
3. **Approval of the Minutes of the April 27, 2021 Human Resources, Finance and Property Committee Meeting**
MOTION BY GIBBS; SECOND BY FISHER TO APPROVE THE APRIL 27, 2021 HUMAN RESOURCES, FINANCE AND PROPERTY COMMITTEE MEETING MINUTES; MOTION CARRIED

4. Educational Presentations/Outcome Monitoring Reports

A. American Rescue Plan Update-

Discussion: The Federal Government has released guidance on the ARPA funds and we will continue to learn what types of services and programs are available to us.

Follow up: Robinson request that we use the educational meeting to more fully understand that we are able to invest in with the funds. The committee will continue the discussion on NCHC facility consolidation

B. Presentation/Update on the NCHC Renovation Project and Upcoming Financial Next Steps

Discussion: None

5. Operational Functions required by Statute, Ordinance, or Resolution:

A. Discussion and Possible Action by Human Resources and Finance and Property Committee

1. Tax Deed Bid Opening/Approval

a) Sale 2021-5 1427 Lake Street Wausau WI (\$5,000 appraised value)

No bids on this property

b) Sale 2021-6 315 N 5th Ave Wausau WI (\$15,000 appraised value)

There are 4 bids on this property Bid#1 \$26,105, Bid#2-\$31,500, Bid #3-\$30,000, Bid#4-\$20,000

MOTION BY GIBBS; SECOND BY MCEWEN TO APPROVE THE BID FOR \$31,500; MOTION CARRIED

c) Sale 2021-7 1111 W Bridge Street Wausau WI (\$8,000 appraised value)

Bid#1-\$8,000, Bid #2-\$23,010, Bid#3-\$10,105, Bid #4-\$14,500, Bid#5-\$15,800, Bid #6-\$15,000

MOTION BY GIBBS; SECOND BY FISHER TO APPROVE THE BID FOR \$23,010; MOTION CARRIED

d) Sale 2021-8 1405 Brady Street Wausau WI (\$174,000 appraised value)

There are no bids on this property

e) Any other tax deed properties listed on the County's website

There is a bid on property 206264 County Road J Rosholt is appraised at \$8,200 with a bid for \$1,000 on the property. The committee may consider a bid lower than the appraisal at this time. The County has \$14,826.69 invested in the property.

MOTION BY GIBBS SECOND BY FISHER TO APPROVE THE BID FOR \$1,000 AND ACCEPT THE BID LESS THAN THE APPRAISED VALUE AND ACCEPT A RELEASE OF LIABILITY AND STATEMENT OF INTENT TO CLEAN UP THE PROPERTY; MOTION CARRIED

2. Set Purchase Price for Tax Deed Properties

- a) 1128 Arthur Street Wausau, WI 54403

The appraisal is \$10,500 for this property

MOTION BY GIBBS; SECOND BY LEAHY TO SET PURCHASE PRICE AT \$10,500; MOTION CARRIED

- b) Tax Deed Sales Properties Sale 2005-6 and 2005-07, Village of Kronenwetter, WI 54455

The properties were appraised at \$11,500 each which is lower. Does the committee want to start over or relist with the new price?

MOTION BY GIBBS; SECOND BY MCEWEN TO SET PURCHASE PRICE AT \$11,500 FOR EACH PARCEL AND START THE PROCESS WITH THE NEW PRICE; MOTION CARRIED

3. Possible Taking the following property on Tax Deed-one acre lot, Town of Spencer, WI PIN 074-2602-032-0991

MOTION BY GIBBS; SECOND BY MCEWEN RECOMMENDS THAT WE DO THE TRANSACTIONAL SCREEN AND ASSESSMENT WHICH WILL INCLUDE AN INSPECTION WARRANT TO GAIN ACCESS TO THE PROPERTY AND EVALUATE THE RISK PRIOR TO TAKING IT ON TAX DEED; MOTION CARRIED

4. Addressing Penalties and Interest associated with Delinquent Special Assessments levied against 909 S 60th Ave

Wausau, WI, in the event the City of Wausau refunds settlement payments made by the County to the City

Corbett-The property has special assessments on it and the county paid \$28,225 in special assessment. The City settled with the property owner and that there were issues with the taxing through the Wausau Water Works water utility and the tax that is owed is void. If the debt is void from the beginning then there is no penalty and interest that would be owing on the property. The parcels are not delinquent and the City has acknowledged that these were not appropriate charges. The County cannot forgive taxes, penalty and interest. In this case the City states that this was not an appropriate charge against the landowner and the Treasurer can void the penalty and interest on this property. When the County settles with the municipality for these debts we "loan" the municipality fund for these loans. The committee has the power to make a settlement with the City and waive any "interest" from the City.

MOTION BY GIBBS; SECOND BY LEAHY TO ACCEPT THE AND VOID THE CHARGES \$48,266.850; MOTION CARRIED

5. Discussion of Tax Deed Property from 2013-404 W Main Spencer, WI,

The County owns this property. This property is occupied. The County received a request from Mr. Komis, through his attorney, to stay on the property. We have entered into leases with two other occupants since the COVID moratorium has been in place.

MOTION BY GIBBS; SECOND BY LEAHY TO HAVE CORPORATION COUNSEL NEOGIATE A LEASE WITH MR KOMIS CONCURRENT WITH THE MORATORIUM; MOTION CARRIED

6. Discussion regarding accepting donation of a land parcel from Habitat for Humanity that is adjacent to property currently held by Marathon County, the tax deed property located at 1308 N 16th Ave Wausau, WI.

Wis. Stat Sec. 75.35(4), indicates that a county may purchase lands adjacent to tax deeded lands in cases where the county board determines that such purchase will improve the salability of such tax deeded lands

Attorney Esponzo stated that Habitat for Humanity acquired property and found out afterwards it is a wetland. The County cannot neogiate a sale for tax deed property. Habitat for Humanity could offer a bid on the tax deed property. The property that Habitat for Humanity owns is adjacent to property that the County owns and would allow us to accept the Habitat property and ask the County Board is they would like to accept the property at 1312 N 16th Ave Wausau, WI.

MOTION BY STARK; SECOND BY FISHER TO RECOMMEND THAT THE COUNTY ACCEPT THE DPNATION OF LAND FROM HABITAT FROM HUMANITY; MOTION CARRIED

7. Discussion and possible action on signed purchase agreement of Tax Deed property to Town of Rib Mountain pursuant to Sec. 75.365, Wis. Stats. and Sec 3.20(8)(a) or (b) of the General Code of Ordinances of Marathon County, which permit counties and other municipalities to enter into agreements for the private sale of tax delinquent land by the county to other municipalities under terms and conditions approved by their governing bodies

MOTION BY STARK; SECOND BY FISHER TO ACCEPT THE PURCHASE AGREEMENT IN RIB MOUNTAIN FOR \$17,000; MOTION CARRIED

8. Approval of April Claims and Questioned Costs

MOTION BY LEAHY; SECOND BY FISHER TO APPROVE THE APRIL CLAIMS; MOTION CARRIED

9. Determination of Eligible Special Assessments and Special Charges for Payment under 74.29 Wi Statutes

Discussion: Robinson stated that the County has the option of buying back the special assessments. Under what conditions does the County want to pay for special charges? It is discretionary for the county to take these special assessments.

Follow up: This will be added to a future meeting of the committee.

B. Discussion and Possible Action by Committee to Forward to the County Board for its consideration

1. Intergovernmental Budget Transfers

MOTION BY STARK; SECOND BY MCEWEN TO APPROVE THE INTERGOVERNMENTAL BUDGET TRANSFERS; MOTION CARRIED

2. Amend the 2021 CIP for additional funding in the Amount of \$314,925 for 2021 Highway Bridge Projects and \$225,000 for the design work on County Highways (AAA, T, X J and Q/G intersection) and bridge B-088

The bridge was let in April and the lowest bid was more than what was budgeted and the highway department would like to move forward with the additional funding for the projects. The highway department would like to have projects ready for any future funding for "Shovel ready projects". There may be BIA funding for one of the projects.

MOTION BY FISHER SECOND BY LEAHY TO APPROVE AMENDING THE 2021 CIP FOR FUNDING THE HIGHWAY PROJECTS WITH FUNDING SOURCE BEING HIGHWAY FUND BALANCE; MOTION CARRIED

3. Resolution –County Land Exchange in the Towns of Easton and Harrison-Lovlien

County Forester Lovlein explained that land was gifted to the county and it is currently held by the forestry department. The County was asked if they want to trade the land with another land owner.

MOTION BY McEWEN; SECOND BY XIONG TO APPROVE THE LAND EXCHANGE IN THE TOWNS OF EASTON AND HARRISON; MOTION CARRIED

6. Policy Issues Discussion and Committee Determination-None

T

7. Announcements:

Next Meeting Date- **May 25, 2021 at 4:00 p.m.**

8. **MOTION BY MCEWEN SECOND LEAHY TO ADJOURN AT 5:25PM**

RESOLUTION # R-_____ - 21
APPROVE 2021 BUDGET TRANSFERS FOR MARATHON COUNTY
DEPARTMENT APPROPRIATIONS

WHEREAS, Section 65.90(5)(a) dictates that appropriations in the Marathon County budget may not be modified unless authorized by a vote of two-thirds of the entire membership of the County Board of Supervisors, and

WHEREAS, the Human Resources, Finance and Property Committee has reviewed and does recommend the 2021 transfers listed below, and

NOW, THEREFORE, BE IT RESOLVED the Marathon County Board of Supervisors authorize and direct the budget transfers as listed below:

Transfer from:	Health-BAA-BAJ 82446 Other Health State Grant
Transfer to:	Health-BAA-BAJ9 Various Expenditures
Amount:	\$41,656
Re:	Public Health Emergency Quarantine

Transfer from:	Finance-BAC-BAC 82315 Federal ARPA COVID Local Aid Grant
Transfer to:	Finance-BAC-BAC 92190 Other Professional Services/98190 Other Capital Equipment –New
Amount:	\$13,178,290
Re:	American Rescue Plan Coronavirus State and Local Fiscal Recovery Aid

Transfer from:	Medical Examiner 101 11092520 Pathology
Transfer to:	CIP 602 938 98463 Morgue/EMG Response Study
Amount:	\$10,000
Re:	Funding for space need study for regional morgue in Marathon County

That a Class 1 Notice of this transaction be published within (10) days of its adoption;

BE IT FURTHER RESOLVED that the County Board of Supervisors hereby authorizes and directs the Marathon County Clerk to issue checks pursuant to this resolution and the Marathon County Treasurer to honor said checks.

BE IT FURTHER RESOLVED that the proper officers of Marathon County are hereby authorized and directed to take all actions necessary to effect this policy.

Respectfully submitted this 25th day of May 2021.

HUMAN RESOURCES, FINANCE AND PROPERTY COMMITTEE

Fiscal Note: This resolution modifies the revenues and expenditures for various County funds. There is no additional County levy appropriated in this resolution.

MARATHON COUNTY

Budget Transfer Authorization Request Form

This form must be completed electronically and emailed to **Season Welle, Kristi Palmer**, and to your Department Head. This email will confirm that your Department Head acknowledges and approves this transfer. Forms that are incomplete, incorrect, out-of-balance, or that have not been sent to your Department Head will be returned. The Finance Department will forward completed forms to the Marathon County Human Resources, Finance & Property Committee.

DEPARTMENT: Health

BUDGET YEAR: 2021

TRANSFER FROM:

Action	Account Number	Account Description	Amount
Revenue Increase	BAA-BAJ-8-2446	Other Health Care Services – State Grants	41,656

TRANSFER TO:

Action	Account Number	Account Description	Amount
Expenditure Increase	BAA-BAJ-9-2990	Sundry Contractual Expenses	\$445
Expenditure Increase	BAA-BAJ-9-3130	Printing and Duplication	\$803
Expenditure Increase	BAA-BAJ-9-3350	Meals	\$84
Expenditure Increase	BAA-BAJ-9-3360	Lodging	\$40,324

I, the undersigned, respectfully request that the Human Resources, Finance & Property Committee approve the following change in budget / transfer of funds as discussed in the attached supplemental information.

Requested By: Kim Wieloch

Date Completed: 4/14/2021

COMPLETED BY FINANCE DEPARTMENT:

Approved by Human Resources, Finance & Property Committee: _____

Date Transferred: _____

MARATHON COUNTY

Budget Transfer Authorization Request – Supplemental Information

Attach this supplemental information to the original Budget Transfer Authorization Request Form. All questions must be completed by the requesting department or the Budget Transfer Authorization Request Form will be returned.

- 1) What is the name of this Program/Grant? (DO NOT use abbreviations or acronyms)
Public Health Emergency Quarantine
- 2) Provide a brief (2-3 sentence) description of what this program does.
These funds will be used to cover expenses related to quarantining or isolating a person outside his/her home during a public health state of emergency declared by the Governor in response to the COVID-19 pandemic.
- 3) This program is: (Check one)
 - An Existing Program.
 - A New Program.
- 4) What is the reason for this budget transfer?
 - Carry-over of Fund Balance.
 - Increase/Decrease in Grant Funding for Existing Program.
 - Increase/Decrease in Non-Grant Funding (such as tax levy, donations, or fees) for Existing Program.
 - Set up Initial Budget for New Grant Program.
 - Set up Initial Budget for New Non-Grant Program
 - Other. Please explain: State of Emergency extended past 12/31/2020 until 3/31/2021.
- 5) If this Program is a Grant, is there a "Local Match" Requirement?
 - This Program is not a Grant.
 - This Program is a Grant, but there is no Local Match requirement.
 - This Program is a Grant, and there is a Local Match requirement of: (Check one)
 - Cash (such as tax levy, user fees, donations, etc.)
 - Non-cash/In-Kind Services: (Describe) [Click here to enter description](#)
- 6) Does this Transfer Request increase any General Ledger 8000 Account Codes? (Capital Outlay Accounts)
 - No.
 - Yes, the Amount is Less than \$30,000.
 - Yes, the Amount is \$30,000 or more AND: (Check one)
 - The capital request HAS been approved by the CIP Committee.
 - The capital request HAS NOT been approved by the CIP Committee.

COMPLETED BY FINANCE DEPARTMENT:

Is 10% of this program appropriation unit or fund? No Is a Budget Transfer Resolution Required? Yes

MARATHON COUNTY

Budget Transfer Authorization Request Form

This form must be completed electronically and emailed to **Season Welle, Kristi Palmer**, and to your Department Head. This email will confirm that your Department Head acknowledges and approves this transfer. Forms that are incomplete, incorrect, out-of-balance, or that have not been sent to your Department Head will be returned. The Finance Department will forward completed forms to the Marathon County Human Resources, Finance & Property Committee.

DEPARTMENT: [Click here to select your department](#)

BUDGET YEAR: Enter Year

TRANSER FROM:

Action	Account Number	Account Description	Amount
Revenue Increase	BAC BAC82315	FEDERAL ARPA COVID LOCAL AID	13,178,290

TRANSER TO:

Action	Account Number	Account Description	Amount
Expenditure Increase	BAC BAC92190	OTHER PROFESSIONAL SERVICES	100,000
Expenditure Increase	BAC BAC 98190	OTHER CAPITAL EQUIPMENT-NEW	13,078,290

I, the undersigned, respectfully request that the Human Resources, Finance & Property Committee approve the following change in budget / transfer of funds as discussed in the attached supplemental information.

Requested By: Kristi Palmer

Date Completed: 5/21/2021

COMPLETED BY FINANCE DEPARTMENT:

Approved by Human Resources, Finance & Property Committee: _____

Date Transferred: _____

MARATHON COUNTY

Budget Transfer Authorization Request – Supplemental Information

Attach this supplemental information to the original Budget Transfer Authorization Request Form. All questions must be completed by the requesting department or the Budget Transfer Authorization Request Form will be returned.

1) What is the name of this Program/Grant? (DO NOT use abbreviations or acronyms)

American Rescue Plan Coronavirus State & Local Fiscal Recovery Aid

2) Provide a brief (2-3 sentence) description of what this program does.

The Coronavirus State and Local Fiscal Recovery Funds provide substantial flexibility for each government to meet local needs—including support for households, small businesses, impacted industries, essential workers, and the communities hardest hit by the crisis. These funds can also be used to make necessary investments in water, sewer, and broadband infrastructure

3) This program is: (Check one)

An Existing Program.

A New Program.

4) What is the reason for this budget transfer?

Carry-over of Fund Balance.

Increase/Decrease in Grant Funding for Existing Program.

Increase/Decrease in Non-Grant Funding (such as tax levy, donations, or fees) for Existing Program.

Set up Initial Budget for New Grant Program.

Set up Initial Budget for New Non-Grant Program

Other. Please explain: [Click here to enter description](#)

5) If this Program is a Grant, is there a “Local Match” Requirement?

This Program is not a Grant.

This Program is a Grant, but there is no Local Match requirement.

This Program is a Grant, and there is a Local Match requirement of: (Check one)

Cash (such as tax levy, user fees, donations, etc.)

Non-cash/In-Kind Services: (Describe) [Click here to enter description](#)

6) Does this Transfer Request increase any General Ledger 8000 Account Codes? (Capital Outlay Accounts)

No.

Yes, the Amount is Less than \$30,000.

Yes, the Amount is \$30,000 or more AND: (Check one)

The capital request HAS been approved by the CIP Committee.

The capital request HAS NOT been approved by the CIP Committee.

COMPLETED BY FINANCE DEPARTMENT:

Is 10% of this program appropriation unit or fund? Yes

Is a Budget Transfer Resolution Required? Yes

MARATHON COUNTY
Budget Transfer Authorization Request Form

This form must be completed electronically and emailed to **Season Welle, Kristi Palmer**, and to your Department Head. This email will confirm that your Department Head acknowledges and approves this transfer. Forms that are incomplete, incorrect, out-of-balance, or that have not been sent to your Department Head will be returned. The Finance Department will forward completed forms to the Marathon County Human Resources, Finance & Property Committee.

DEPARTMENT: Medical Examiner

BUDGET YEAR: 2021

TRANSER FROM:

Action	Account Number	Account Description	Amount
Expenditure Decrease	101 11092520	Pathology	10,000

TRANSER TO:

Action	Account Number	Account Description	Amount
Expenditure Increase	602 93898463	CIP-Morgue/EMG Response Study	10,000

I, the undersigned, respectfully request that the Human Resources, Finance & Property Committee approve the following change in budget / transfer of funds as discussed in the attached supplemental information.

Requested By: Jessica Blahnik

Date Completed: 5/21/2021

COMPLETED BY FINANCE DEPARTMENT:

Approved by Human Resources, Finance & Property Committee: _____

Date Transferred: _____

MARATHON COUNTY

Budget Transfer Authorization Request – Supplemental Information

Attach this supplemental information to the original Budget Transfer Authorization Request Form. All questions must be completed by the requesting department or the Budget Transfer Authorization Request Form will be returned.

- 1) What is the name of this Program/Grant? (DO NOT use abbreviations or acronyms)
Morgue/Emergency Response study
- 2) Provide a brief (2-3 sentence) description of what this program does.
This CIP project is to explore the option of creating a regional morgue here in Marathon County
- 3) This program is: (Check one)
 An Existing Program.
 A New Program.
- 4) What is the reason for this budget transfer?
 Carry-over of Fund Balance.
 Increase/Decrease in Grant Funding for Existing Program.
 Increase/Decrease in Non-Grant Funding (such as tax levy, donations, or fees) for Existing Program.
 Set up Initial Budget for New Grant Program.
 Set up Initial Budget for New Non-Grant Program
 Other. Please explain: [Click here to enter description](#)
- 5) If this Program is a Grant, is there a "Local Match" Requirement?
 This Program is not a Grant.
 This Program is a Grant, but there is no Local Match requirement.
 This Program is a Grant, and there is a Local Match requirement of: (Check one)
 Cash (such as tax levy, user fees, donations, etc.)
 Non-cash/In-Kind Services: (Describe) [Click here to enter description](#)
- 6) Does this Transfer Request increase any General Ledger 8000 Account Codes? (Capital Outlay Accounts)
 No.
 Yes, the Amount is Less than \$30,000.
 Yes, the Amount is \$30,000 or more AND: (Check one)
 The capital request HAS been approved by the CIP Committee.
 The capital request HAS NOT been approved by the CIP Committee.

COMPLETED BY FINANCE DEPARTMENT:

Is 10% of this program appropriation unit or fund? No Is a Budget Transfer Resolution Required? Yes

PROCUREMENT PROCEDURE (O-3-88)

Sec. 3.01. - Purpose.

The purpose of this subchapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by this County, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 3.02. - Application.

- (1) This Policy applies to contracts for the procurement of materials, supplies, equipment, permanent personal property, miscellaneous capital and contractual services, and construction entered into by this County after the effective date of this Policy unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of its source.
- (2) Federal or State Funds. When the procurement involves ~~purchase from another governmental entity or~~ the expenditure of Federal or State assistance or contract funds, the procurement shall be conducted in accordance with any applicable Federal or State law and regulation which are not reflected in this policy.
- (3) Public Works. ~~When contracts involve projects which meet the statutory definition of "Public Works," said contracts shall comply with all applicable State Law and regulations, including not limited to, Wis. Stats., 66.0901, et seq.~~
- (4) Other terms and conditions. Nothing in the policy shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.
- (5) Local and State Government purchasing. ~~Notwithstanding this code and other statutes requiring bids for public purchases, purchasing agents of this county may make purchases from another unit of government, including the federal government, whether located in this state or any other state, including the State of Wisconsin, or any federally recognized American Indian tribe without the intervention of bids. Source: Wis. Stats., §§66.0131, 66.0301, and 66.0303 and their successor statutes~~
- (6) Cooperative Purchasing. ~~Purchasing agents of this county may conduct purchasing transactions in agreement with a municipality or municipalities that have agreed to create a consortium to administer, sponsor or conduct purchasing transactions under a joint contract. Source: Wis. Stats., §16.73 and its successor statutes.~~
- (7) Reverse Procurement. ~~Purchasing agents of this county shall abide by the spirit and principles of this code when disposing of used or surplus property. No Marathon County officer, employee or immediate member of their family may purchase or bid on property being disposed of by the County.~~

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(O-6-98)

Sec. 3.03. - Definitions.

Architect-engineer and land surveying services. Those professional services within the scope of the practice of architecture, professional engineering or land surveying, as defined by the laws of this State.

Attorney-legal services.

Blind trust. An independently managed trust in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust.

Brand name specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

Brand name or equal specifications. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard or quality, performance and other salient characteristics needed to meet County requirements and which provides for the submission of equivalent products.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Change order (unilateral). A written order signed and unilaterally issued by the purchasing agent, directing the contractor to make changes which the "changes" clause of the contract authorizes the purchasing agent to order without the consent of the contractor.

Confidential information. Any information which is available to an employee only because of the employee's status as an employee of this County and is not a matter of public knowledge or is not available to the public on request.

Construction. [See Public Works, below.](#) ~~The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.~~

Contract. All types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

Contract modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

Contractor. Any person having a contract with a public agency of the County.

[Contractual Services.](#)

Cost analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

Cost data. Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost reimbursement contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this subchapter and a fee or profit, if any.

Direct or indirect participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

Disadvantaged business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

[Equipment.](#)

Employee. An individual drawing a salary from the County, whether elected or not, and any non-compensated individual performing personal services for the County or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of this County.

Financial interest.

- (a) Ownership of any interests or involvement in any relationship from which or as a result of which a person within the past year has received or is presently or in the future entitled to receive more than \$1 per year or its equivalent;
- (b) Ownership of any property or business; or
- (c) Holding a position in a business such as an officer, director, trustee, partner, employee or the like, or holding any position of management.

Gratuity. A payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate family. A spouse, children, parents, brothers and sisters.

Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

Lease. A contract for the use of equipment or other supplies or real property under which title will not pass to the County at any time.

Lease with option. A lease contract with a renewal and/or purchase option whereby title may pass to the County. (Cr. #O-23-95)

[Materials.](#)

[Miscellaneous Capital](#)

[Permanent Personal Property.](#)

Person. Any business, individual, union, committee, club, other organization or group of individuals.

Price analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Price data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Public agency. A public entity subject to or created by local ordinance. ??

[Public Works.](#) The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

[Purchasing Agent.](#) See sec., 3.04, below.

Qualified products list. An approved list of supplies, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror. A person who has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive bidder. A person who has submitted a bid which conforms in all material respects to the invitation for bids.

[Services.](#) See Contractual Services, above.

Small business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

Commented [SC1]: Double check this.

Small purchases. Any purchase not exceeding \$20,000.00 when made according to the small purchase procedures in § 3.05(3) of this subchapter.

Specification. Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

Supplies.

(O-23-95)

Sec. 3.04. - Purchasing agents.

(1) *Establishment and appointment.*

(a) *Position of purchasing agents.* The purchasing agents shall be the County's principal public purchasing officials.

(b) *Appointment.* The purchasing agents shall be the department head of each County department or his designee, unless others are appointed by the County Administrator.

(2) *Authority and duties.*

(a) *Principal public purchasing officials.* The purchasing agents shall serve as the principal public purchasing official of each department and shall be responsible for the procurement of supplies, services and construction in accordance with this subchapter as well as the management and disposal of supplies, materials and equipment.

(b) Budget Limitations. Purchasing agents for this county shall have the authority to enter into purchasing transactions within the limits of their respective departmental budgets and in conjunction with authorized capital improvement program expenditures. Any purchasing transaction or other acquisition of property, not specifically budgeted, is subject to county budget amendment procedures.

(c) *Duties.* In accordance with this subchapter and subject to the supervision of the County Administrator, the purchasing agents shall:

1. Purchase or supervise the purchasing of all supplies, materials, equipment, services and construction needed by each department.
2. Sell, trade or otherwise dispose of supplies, materials and equipment.
3. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, materials and construction.

(d) *Operational procedures.* Consistent with this subchapter and with the approval of the County Administrator, the purchasing agents may adopt operational procedures relating to the execution of his duties.

Sec. 3.05. - Source selection and contract formation.

(1) *Competitive sealed bidding.*

(a) *Conditions for use.* All contracts of this County shall be awarded by competitive sealed bidding, except as otherwise provided in subsections (2), (3), (4), (5) and § 3.10(1) of this subchapter.

(b) *Proof of responsibility.* Proof of responsibility may be required of all bidders under § 66.0901(2), (3) and (4), Wis. Stats.

(c) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.

- (d) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids consonant with the provisions of the State Statutes, which shall provide for a minimum of not less than 14 calendar days. Such notice shall, when required by law, include publication in a newspaper of general circulation. The public notice shall state the date, time and place of bid opening.
 - (e) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as the purchasing agents deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
 - (f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alternation or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, as well as compatibility with existing property, equipment, inventory, and/or maintenance costs. Nothing herein shall prevent the Purchasing Agent from standardizing property, inventory, supplies, and equipment if by so doing it is determined by the Purchasing Agent to be in the best interest of the County by minimizing life cycle maintenance and inventory costs. ~~In purchases over \$20,000.00, the County Administrator and the Finance and Property Committee shall approve the purchasing decision.~~
 - (g) *Withdrawal or modification of bids.* Bids may be withdrawn or modified any time prior to the time of opening bids. No bid may be withdrawn or modified after the time of opening bids has passed, however, correction in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake and the bid price actually intended. However, downward correction of a bid, which would displace the apparent low bidder, shall only be permitted if the error made and the intended bid price can be determined solely from the bid documents. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the County Administrator.
 - (h) *Rejection of bids.* The County reserves the right to reject any or all bids or parts thereof, and to award to the bidder who, in the judgment of the County, will best serve the County. A bid which has not been prepared according to the instructions set forth in the invitation for bids or which does not include a price which is both adequate and reasonable on each and every item named in the bid may be subject to rejection.
 - (i) *Award.* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
 - (j) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (2) *Competitive sealed proposals.*
- (a) *Conditions for use.* When the purchasing agents determine that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method as is consistent with State law.
 - (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
 - (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in subsection (1)(d) (Competitive Sealed Bidding, Public Notice), provided the minimum time shall be 14 calendar days.

- (d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award. The register of proposals shall be in the custody of the purchasing agent who shall maintain same.
 - (e) *Evaluation factors.* The request for proposals shall set forth the evaluation factors to be used with the County reserving the right to accept or reject proposals if deemed in the best interest of the County.
 - (f) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the information derived from proposals submitted by competing offerors.
 - (g) *Award.* Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration past performance, price and the evaluation factors set forth in the Request for Proposals, as well as the criteria set forth in Section 3.05(1)(f) of this Code.
- (3) *Small purchases procedure.* Any contract not exceeding ~~\$8030~~,000.00 may be made in accordance with small purchase procedures, however, purchases shall not be artificially divided so as to constitute a small purchase under this section. If possible, for purchases over \$10,000.00, three businesses shall be solicited to submit quotations from which the lowest acceptable quotation shall be selected. The name of the business submitting a quotation and the date and amount of each quotation shall be recorded and maintained as a public record. The purchasing agent shall maintain a list of all businesses from which quotations were sought. [Independent boards created intergovernmental agreement, pursuant to Wis. Stats., §66.0301, that are responsible for managing Marathon County property, may pass measures increasing the amount of money](#)
 - (4) *Sole source procurement.* A contract may be awarded without competition when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service or construction item and when allowed by law. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the amount and type of each contract and listing the items procured under each contract.
 - (5) *Emergency procurements.* The purchasing agent may make or authorize others to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety, if allowed by the State Statutes, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and forwarded to the County Administrator. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract and listing of the items procured under the contract.
 - (6) *Cancellation of invitations for bids or requests for proposals.* An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when same is in the best interests of the County. The reasons thereof shall be made part of the contract file. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal rejected in whole or in part when in the best interest of the County. Written notice of cancellation shall be sent to all businesses solicited.
 - (7) *Responsibility of bidders and offerors.*

- (a) *Determination of nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the purchasing agent. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.
- (b) *Right of nondisclosure.* Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the County outside of the office of the purchasing agent without prior written consent by the bidder or offeror provided, however, that the bidder or offeror as part of and with his bid sets forth in writing the data or information not to be disclosed and the reasons therefor, and the nondisclosure complies with State public records laws.

~~(8) Cost or pricing data.~~

- ~~(a) Required submissions relating to the award of contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$25,000.00 and is to be awarded by competitive sealed proposals [sub. (2)], by sole source procurement authority [sub. (4)] or by architect-engineer and land surveyor selection procedures [§ 3.10(1)].~~
- ~~(b) Exceptions. The submission of cost or pricing data relating to the award of a contract is not required where:
 - 1. The contract price is based on adequate price competition;
 - 2. The contract price is set by law or regulation; or
 - 3. It is determined in writing by the purchasing agent that the requirements of par. (a) may be waived and the determination states the reasons for such waiver.~~
- ~~(c) Required submissions relating to change orders or contract modifications. A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed ten percent of the amount bid.~~
- ~~(d) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:
 - 1. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
 - 2. It is determined in writing by the purchasing agent that the requirements of par. (c) may be waived and the determination states the reasons for such waiver.~~
- ~~(e) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.~~
- ~~(f) Price adjustment provision required. Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the County and the contractor.~~

- (9) *Cost or price analysis.* If a contract is being funded in whole or in part by assistance from a federal or State agency, a cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract.

- (10) *Types of contracts.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract, ~~or a~~ cost-plus-a-percentage-of-construction-cost contract or design-build contract are prohibited. A cost reimbursement contract may be used if it is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service or construction item required except under such a contract.
- (11) *Cost reimbursement provisions.* Cost reimbursement provisions shall only obligate the County to reimburse reasonable costs, allocable to the contractor, either directly or indirectly, that are accounted for in accordance with generally accepted accounting principles. If a contract is being funded in whole or in part by assistance from a federal or State agency, then reimbursement to contractors for incurred costs or cost estimates included in negotiated prices shall be subject to appropriate federal cost principles which are codified in subpar. 1-15 of Title 41, Code of Federal Regulations.
- (12) *Lease contracts.* A lease may be entered into provided:
- (a) It is determined to be in the best interests of the County; and
 - (b) All conditions for renewal and costs of termination are set forth in the lease.
- (13) *Lease with option contracts.* Where a lease with a renewal and/or a purchase option contract is contemplated, whereby title to leased facilities, equipment, or supplies may pass to the County, such lease with renewal and/or purchase option contract may be entered into by the County, provided the purchasing agent prepares a good faith written determination that:
- (a) All terms are in the best interests of the County;
 - (b) All conditions for renewal, costs of termination and costs of exercise of the purchase option(s) are set forth in the lease;
 - (c) All written documents including, but not limited to, leases, contracts, invitations for bids, requests for proposal, and other communications which solicit bids, proposals, or quotes contain a statement reserving the County's unilateral right to terminate the procurement relationship, without any penalty, in the event the County Board fails to appropriate sufficient funds in future budgets with which the procurement relationship could be maintained;
 - (d) Notice of any option provision is included in the original solicitation;
 - (e) Procurement of alternative comparable supplies, equipment, or facilities has been considered and determined to be at greater cost or less benefit to the best interests of the County; and
 - ~~(f) The lease contains the provision that the County Administrator must agree in writing in advance of any exercise of an option to purchase.~~
- (14) *Approval of accounting system.* Except with respect for firm fixed price contracts, no contract type shall be used unless it has been determined in writing by the purchasing agent that:
- (a) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.
 - (b) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.
- (15) *Right to inspect plant.* The County may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any level which is pertinent to the performance of any contract awarded by the County.
- (16) *Right to audit records.*
- (a) *Audit of cost or pricing data.* The County may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to sub. (8) (Cost or Pricing Data) to the extent that such books, documents, papers and records are pertinent to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain such books, documents,

papers and records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.

- (b) *Contract audit.* The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.
- (17) *Reporting of anticompetitive practices.* When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District Attorney or the State Attorney General by the Corporation Counsel.
- (18) *(County) procurement records.*
 - (a) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the County in a contract file by the purchasing agent.
 - (b) *Retention of procurement records.* All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the County Board and as may be required by the State Statutes. If a contract is being funded in whole or in part by assistance from a federal or State agency, then all procurement records pertaining to that contract shall be maintained for three years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.
- (19) *Purchase of used items.* If the Purchasing Agent and the County Administrator concur that the purchase of used property, equipment, or supplies would be in the best financial interest of the County, nothing herein shall prevent said purchase provided that the procedure set forth in Section 3.05(1) through (5) is complied with. The advertisement or solicitation shall set forth, as far as practicable, the minimum standards for the item to be purchased. ~~For purchases estimated to exceed \$20,000.00, the prior approval of the Finance and Property Committee shall first be obtained. The County Administrator and the Finance and Property Committee shall advise the County Board of all purchases made pursuant to this section.~~

(R-61-88; O-23-95; 0-6-98; O-15-06)

Sec. 3.06. - Specifications.

- (1) *Maximum practicable competition.* All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the County's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers and draftsmen.
- (2) *Qualified products list.* A qualified products list may be maintained by the purchasing agent.
- (3) *Brand name or equal specification.*
 - (a) *Use.* Brand name or equal specifications may be used when the purchasing agent determines that:
 - 1. No other design or equal specification or qualified products list is available;
 - 2. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - 3. The nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or

4. Use of a brand name or equal specification is in the County's best interest.

- (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate three or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry, he shall provide a description of the required design, function or performance characteristics.
- (d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

(4) *Brand name specification.*

- (a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing agent makes a determination that only the identified brand name item or items will satisfy the County's needs. The purchasing agent must be prepared to substantiate the basis for the selection of the chosen material, if only a single material is specified.
- (b) *Competition.* The purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under § 3.05(4) (Sole Source Procurement).

~~(5) *Buy American.* If a contract is being funded in whole or in part by assistance from a federal agency, then the County shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance. In all other cases, the purchasing agent shall make every reasonable effort to purchase products manufactured in the United States, as is not inconsistent with lowest responsible bidder statutory requirements.~~

~~(6) *Energy conservation.* If a contract is being funded by a federal or State agency, then the County's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).~~

Sec. 3.07. - Construction contract management and contract administration.

- (1) *Responsibility for selection of methods of construction contracting management.* The purchasing agent shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the purchasing agent shall consider the County's requirements, its resources and the potential contractors' capabilities. ~~The purchasing agent shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.~~
- (2) *Contract administration.* The purchasing agent shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded and the terms and conditions of the contract.

Sec. 3.08. - Bonds and bid security.

(1) *Bid security.*

- (a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this State, the equivalent in cash or otherwise supplied in a form satisfactory to the County.

- (b) *Amount of bid security.* Bid security shall be in an amount equal to at least ten percent of the amount of the bid.
 - (c) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.
 - (d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in § 3.05(1)(f), no action shall be had against the bidder or the bid security.
- (2) *Contract performance and payment bonds.*
- (a) *When required—Amounts.* When a construction contract is awarded, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract:
 - 1. A performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price specified in the contract.
 - 2. A payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.
 - (b) *Reduction of bond amounts.* After written notice to and approval by the County Administrator, the purchasing agent is authorized to reduce the amount of the performance and payment bonds.
 - (c) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in par. (a) above.
 - (d) *Suits on payment bonds—Right to institute.* Any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.
 - (e) *Suits on payment bonds—Where and when brought.* Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the County or district in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.
- (3) *Copies of bond forms.* Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

Sec. 3.09. - Contract clauses and their administration.

- (1) ~~Contract clauses and their administration.~~

~~(a) *Contract clauses.* All County contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing agent must inform the County Administrator and Corporation Counsel of issue clauses appropriate for supply, service or construction contracts, addressing at least the following subject:~~

- ~~1. The unilateral right of the County to order in writing changes in the work within the scope of the contract.~~
- ~~2. The unilateral right of the County to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract.~~
- ~~3. Variations occurring between estimated quantities of work in a contract and actual quantities.~~
- ~~4. Defective pricing.~~
- ~~5. Liquidated damages.~~
- ~~6. Specified excuses for delay or nonperformance.~~
- ~~7. Termination of the contract for default.~~
- ~~8. Termination of the contract in whole or in part for the convenience of the County.~~
- ~~9. Suspension of work on a construction project ordered by the County.~~
- ~~10. Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site conditions clause need not be included in a contract:~~
 - ~~a. When the contract is negotiated.~~
 - ~~b. When the contractor provides the site or design; or~~
 - ~~c. When the parties have otherwise agreed with respect to the risk of differing site conditions.~~

~~(b) *Price adjustments.*~~

- ~~1. Adjustments in price resulting from the use of contract clauses required by par. (a) above shall be computed in one or more of the following ways:~~
 - ~~a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;~~
 - ~~b. By unit prices specified in the contract or subsequently agreed upon;~~
 - ~~c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;~~
 - ~~d. In such other manner as the contracting parties may mutually agree; or~~
 - ~~e. In the absence of agreement by the parties, by a unilateral determination by the County of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of § 3.12 (Appeals and Remedies).~~
- ~~2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 3.05(8) (Cost or Pricing Data).~~

~~(c) *Standard clauses and their modification.* The purchasing agent, after informing the County Administrator and Corporation Counsel, may establish standard contract clauses for use in County contracts. If the purchasing agent establishes any standard clauses addressing the subjects set forth in par. (a) above, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.~~

~~(2) *Contractor records.* If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:~~

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- ~~(a) Requiring the contractor and subcontractors at any tier to maintain for six years from the date of final payment under the contract all books, documents, papers and records pertinent to the contract.~~
 - ~~(b) Requiring the contractor and subcontractor at any tier to provide to the County, the federal grantor agency, the Comptroller General of the United States or any of their authorized representatives access to such books, documents, papers and records for the purposes of examining, auditing and copying them.~~
- (3) *Patents.* If a contract involving research and development, experimental or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:
 - (a) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract.
 - (b) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental or demonstration work.
- (4) *Copyrights and rights in data.* If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals and similar work products developed and paid for under the contract.
- (5) *Notice of federal public policy requirements.* If the contract is being funded in whole or in part by assistance from a federal agency and the contract is subject to one or more federal public policy requirements, such as:
 - (a) Equal employment opportunity;
 - (b) Fair labor standards;
 - (c) Energy conservation;
 - (d) Environmental protection; or
 - (e) Other similar socio-economic programs, then the purchasing agent shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.
- (6) *Fiscal responsibility.* Every contract modification, change order or contract price adjustment under a construction contract with the County in excess of ~~the total project budget or the total contract budget~~ five percent of project construction cost shall be subject to prior approval by the boards, committees or commissions of authority after receiving a report from the purchasing agent as to the effect of the contract modification, change order or contract price adjustment ~~on the total project budget or the total contract budget.~~

Sec. 3.10. - Architect-engineer and land surveying services.

- (1) *Applicability.* Architect-engineer and land surveying services shall be procured as provided in this section except as authorized by Sections 3.05(3) (Small Purchases), ~~3.05(4) (Sole Source)~~ and 3.05(5) (Emergency Procurements).
- (2) *Public announcement.* It is the policy of this County to publicly announce all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications and past performance with existing contracts as determined in prequalifying procedures. In the procurement of architect-engineer and land surveying services, the purchasing agent shall request firms to submit a statement of qualifications and performance data.
- (3) *Selection process.* The purchasing agent and/or the County Administrator shall conduct discussions with no less than three firms regarding the contract and shall select from among them the firm deemed

most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the purchasing agent or the County Administrator.

- (4) *Negotiation.* The purchasing agent and/or County Administrator shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the purchasing agent or County Administrator determines to be fair and reasonable to the County. In making this decision, the purchasing agent shall take into account the estimated value, scope, complexity, extension of existing contracts and the professional nature of the services to be rendered. Should the purchasing agent or County Administrator be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the purchasing agent and/or County Administrator determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The purchasing agent and/or County Administrator shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the purchasing agent and/or County Administrator shall formally terminate negotiations. The purchasing agent and/or County Administrator shall then undertake negotiations with the third most qualified firm. Should the purchasing agent and/or County Administrator be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the purchasing agent and/or the County Administrator shall select additional firms in order of their competence and qualifications, and the purchasing agent and/or County Administrator shall continue negotiations in accordance with this section until an agreement is reached.

(O-23-95)

Sec. 3.105. - Attorney professional services.

- (a) *Retention of legal services.* Except as provided below, the Corporation Counsel shall hire and manage all outside legal counsel engaged to represent and/or advise the county regarding all matters of any character, in which the county is interested.
1. All departments or standing committees wishing to engage outside legal counsel shall contact Marathon County Office of Corporation Counsel.
 2. The County may enter into negotiated contracts without a competitive selection process for the procurement of professional services in individual cases or matters, if the services are to be provided by attorneys who charge on an hourly basis.
 3. When retention of legal services to perform ongoing services in a type of matter, such as bond counsel or prosecution services, is required, the procurement policy for professional services shall be followed.
 4. The Corporation Counsel may act in concert with any Department Head or chairperson whose department, committee or other governance subgroup is affected by said legal matters and shall have authority to sign engagement letters on behalf of the County.
- (b) *Limitation of fees.* Counsel who are designated or engaged by the county's insurance carriers shall be monitored by Corporation Counsel, but shall be paid by said insurance carriers. In all other matters, where the aggregate legal fees exceed the initial fee agreement or \$25,000.00, whichever is less, the Corporation Counsel shall notify the Human Resource/Finance Committee of the status of the matter and seek approval for additional expenditures. Any contract for services or letter of engagement shall reference this limitation on fees.
- (c) *Billing frequency and format.*
1. Time charges. Actual time should be billed in one-tenth (.10) hour increments.
 2. Billing frequency. Invoices for legal services or expense shall be invoiced every 30 days from the date of initial suit assignment and monthly thereafter.
 3. Invoices submitted more than 60 days after the last date of legal services will require explanation of the billing delay to the Corporation Counsel.

4. Invoices submitted more than one year after the last date of legal services or expense may be rejected.
- (d) *Filing of agreements.* Attorney professional services contracts or agreements should be placed on file with the County Clerk.
- (e) *Conflict of interest.* In cases where the Corporation Counsel has a conflict, the County Administrator shall act pursuant to the procedure set forth above. In cases where both the Corporation Counsel and the Administrator have a conflict, the County Board Chair shall act pursuant to the procedure set forth above.

(O-26-16)

Sec. 3.11. - Debarment or suspension.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the County boards, committees and commissions and the County Administrator and/or Corporation Counsel is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the County Administrator and Corporation Counsel, the purchasing agent, with the approval of the County Administrator, is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person engaged in any activity which might lead to debarment. The causes for debarment include:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under State and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business honesty which currently, seriously and directly affects responsibility as a County contractor.
- (3) Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action:
 - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (5) Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this subchapter.
- (6) For violation of the ethical standards set forth in § 3.14 (Ethics in Public Contracting).

Sec. 3.12. - Appeals and remedies.

- (1) *Bid protests.*
 - (a) *Right to protest.* If unsuccessful bidder, offerer or contractor can show good cause why an award of contract was not in the best interest of the County, a formal protest must be filed with the purchasing agent, in writing, within five business days of the date of notice of award. If the bidder, offerer or contractor is not satisfied with the results of his appeal to the purchasing agent, who shall respond in writing to the protest within five business days of the date of receipt of the protest, the bidder, offerer or contractor may appeal the decision to the County Administrator, in writing,

within five business days of the decision. The County Administrator shall respond in writing within five business days of the date of receipt thereof. A failure to respond to a protest within such time shall be deemed a denial of same. The decision of the County Administrator shall be final, but shall not preclude appeal by the bidder, offerer or contractor to the County Administrative Review Board, provided timely notice of such appeal is made consistent with Ch. 68, Wis. Stats.

- (b) *Stay of procurements during protests.* In the event of a timely protest under par. (a) above, the purchasing agent shall not proceed further with the award of the contract until all administrative and judicial remedies have been exhausted or until the County Administrator makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County.
 - (c) *Entitlement to costs.* In addition to any other relief, when a protest is sustained and the protesting bidder or offerer should have been awarded the contract under the solicitation but is not, then the protesting bidder or offerer shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.
- (2) *Contract claims.*
- (a) *Decision of the purchasing agent.* All claims by a contractor against the County relating to a contract, except bid protests, shall be submitted in writing to the purchasing agent for a decision. Claims include, without limitation, controversies arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or revision.
 - (b) *Notice to the contractor of the purchasing agent's decision.* The decision of the purchasing agent shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of its appeal rights under par. (c) below.
 - (c) *Finality of purchasing agent's decision; contractor's right to appeal.* The purchasing agent's decision shall be final and conclusive unless, within five business days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County Administrator and submits a copy thereof to the County Clerk.
 1. The County Administrator shall issue a written decision within ten business days and shall immediately mail or otherwise furnish a copy of same to the contractor. The decision shall state the reasons therefor and will be final and conclusive unless appealed as outlined below.
 2. If the contractor wishes further review of the County Administrator's decision, he must mail or otherwise deliver a written appeal to the County Clerk within five business days from the date of receipt of the Administrator's decision.
 3. If the contractor wishes further review of the Administrator's decision, he must mail or otherwise deliver a written appeal to the County Clerk for review by the County Administrative Review Board. To qualify for review of the appeal by such Board, the contractor must make timely notice of his appeal consistent with administrative review procedures and as further consistent with Ch. 68, Wis. Stats. All appeals heard by this Board will be conducted consistent with the above referenced ordinance and statutes. The Board's decision shall be written, final and rendered within the time period specified by such procedure.
 - (d) *Failure to render timely decision, exhaustion of administrative remedies required before court action.* Failure by the purchasing agent, County Administrator, boards, committees or Administrative Review Appeals Board to render a decision in the time period specified, unless a longer time period is mutually agreed in writing, shall be deemed an automatic denial entitling the contractor to proceed to his remaining remedy, if any. All administrative remedies must be exhausted under this subchapter before the matter will be deemed ripe for court review.
- (3) *Authority of the purchasing agent to settle bid protests and contract claims.* The purchasing agent, with the approval of the County Administrator, is authorized to settle any protest regarding the solicitation of award of a County contract, or any claims arising out of the performance of a County

contract, prior to an administrative appeal or commencement of an action in a court of competent jurisdiction.

(4) *Remedies for solicitation or awards in violation of law.*

- (a) *Prior to bid opening or closing date for receipt of proposals.* If, prior to bid opening or the closing date for receipt of proposals, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation is in violation of federal, State or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.
- (b) *Prior to award.* If, after bid opening or closing date for receipt of proposals, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, State or municipal law, then the solicitation or proposed award shall be cancelled.
- (c) *After award.* If, after an award, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:
 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. The contract may be ratified and affirmed, provided it is determined that so doing is in the best interests of the County; or
 - b. The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.
 2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County.

~~Sec. 3.13. Assistance to small and disadvantaged businesses.~~

~~(1) Solicitation of small and disadvantaged businesses. The purchasing agents shall assure that both small and disadvantaged businesses are solicited on each procurement for which such businesses may be suited.~~

~~(2) Small, women-owned and minority business enterprises.~~

~~(a) Expand participation. If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agents shall take affirmative steps to assure that small, women-owned and minority businesses are utilized when possible as sources of supplies, services and construction items.~~

~~(b) Examples of affirmative steps. Affirmative steps to be taken may include:~~

- ~~1. Including qualified small, women-owned and minority businesses on solicitation lists.~~
- ~~2. Assuring that small, women-owned and minority businesses are solicited whenever they are potential sources.~~
- ~~3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned and minority business participation.~~
- ~~4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned and minority business.~~
- ~~5. Using the services and assistance of the Small Business Administration, the Office of the Minority Business Enterprise of the Department of Commerce and the Community Services Administration as may be practicable.~~

~~(c) Pass-through to subcontracts. A contractor awarded a federally funded contract shall also take affirmative steps as listed in par. (b) above in the award of its subcontracts.~~

~~(3) Labor surplus area businesses. If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent is encouraged to procure supplies, services and construction items from businesses located in labor surplus areas.~~

Sec. 3.14. - Ethics in public contracting.

- (1) *Criminal penalties.* To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this section. Criminal, civil and administrative sanctions against employees or nonemployees which are in existence on the effective date of this subchapter shall not be impaired.
- (2) *Elected official and employee conflict of interest.*
 - (a) It shall be unethical for any elected or appointed official or employee to participate directly or indirectly in a procurement when the elected official or employee knows that:
 1. The elected official, employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
 2. Any other person, business or organization with whom the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
 - (b) An elected official, employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (3) *Gratuities and kickbacks.*
 - (a) *Gratuities.* It shall be unethical for any person to offer, give or agree to give any elected official, employee or former employee or for any elected official, employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
 - (b) *Kickbacks.* It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
 - (c) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and referred to in every solicitation therefor.
- (4) *Prohibition against contingent fees.* It shall be unethical for a person, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (5) *Contemporaneous employment prohibited.* It shall be unethical for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.
- (6) *Waivers from contemporaneous employment prohibition and other conflicts of interest.* The County Board in the case of the County Administrator, and the County Administrator in the case of all other County employees may grant a waiver from the employee conflict of interest provision [sub. (2)] or the contemporaneous employment provision [sub. (5)] upon making a written determination that:

- (a) The contemporaneous employment or financial interest of the County employee has been publicly disclosed.
 - (b) The County employee will be able to perform his procurement functions without actual or apparent bias or favoritism.
 - (c) The award will be in the best interests of the County.
- (7) *Use of confidential information.* It shall be unethical for any elected official, employee or former employee knowingly to use confidential information for actual or anticipated personal gain.
- (8) *Sanctions.*
- (a) *Employees.* The County Board in the case of the County Administrator with respect to subpars. 1. and 2. and/or subpar. 3. below, and the County Administrator in the case of all other County employees may impose any one or more of the following sanctions on an employee for violations of the ethical standards in this section:
 - 1. Oral or written warnings or reprimands;
 - 2. Suspension with or without pay for specified periods of time; or
 - 3. Termination of employment.
 - (b) *Nonemployees.* The County Board may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:
 - 1. Written warnings or reprimands;
 - 2. Termination of contracts; or
 - 3. Debarment or suspension as provided in § 3.11.
- (9) *Recovery of value transferred or received in breach of ethical standards.*
- (a) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this subchapter by an employee or a nonemployee may be recovered from both employee and nonemployee.
 - (b) *Recovery of kickbacks by the county.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(O-39-91)

Sec. 3.15. - Administrative rules and regulations; promulgation.

The County Administrator is hereby authorized to promulgate administrative rules and regulations to effect efficient, effective and timely implementation of this subchapter. Such authorization shall include, but not be limited to, procedures, methods, personnel, work assignments and work stations.

Sec. 3.16. - Application.

- (1) This subchapter applies to all departments, officers, committees, agencies, boards and commissions of the County, as well as all entities directly or indirectly using County provided or County channeled funds, as well as any of the above hereinafter created, organized or reorganized.
- (2) Should any provision of this subchapter be held invalid or unenforceable by a court of competent jurisdiction, or appear to be so based upon review by authorized legal counsel of County, the remainder

of this subchapter, or the application of such term or provision to persons and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this subchapter shall be valid and shall be enforceable to the fullest extent provided and permitted by law.

- (3) It is intended that this subchapter shall be interpreted in a manner consistent with and applied in harmony with current and future State and federal statutes, rules and regulations.

Sec. 3.17. - Participation in the Central Wisconsin Public Purchasing Association.

- (1) *Intent.* The Office of County Administrator has determined some procurements of supplies might be most economically obtained through County affiliation with a group known as Central Wisconsin Public Purchasing Association (CWPPA), which is largely comprised of various elected and appointed officials and employees from various area units and departments of local and state government.
- (2) *Participation.* The County Board of Supervisors ordains as follows:
- (a) Authorizing, affirming and ratifying the participation of a Marathon County representative/member in the Central Wisconsin Public Purchasing Association (CWPPA).
 - (b) Directing that any County purchases contemplated or made through CWPPA be consummated only after a specific determination by the County Administrator or his designee to CWPPA that the requirements of General Code § 3.01 et seq., County Procurement Procedure, have been fully complied with in all respects, regardless of which association member's governmental unit or department acts as designated lead agency for handling a given procurement.
 - (c) Directing further that the County Administrator make specific determinations, in consultation with the Corporation Counsel, of any legal requirements that require said association to comply with State open meetings and public records laws, and further insure these are duly adhered to by said CWPPA and Marathon County's representative/member of same where required.
 - (d) Directing further that the County Administrator work with the Corporation Counsel in assuring the reduction to writing by Marathon County and other CWPPA governmental members of any generally understood agreements between them under §§ 59.07(7) and (11), and 66.30, Wis. Stats., and any other similar and applicable laws.

(R-14-95)

Secs. 3.18, 3.19. - Reserved.

PROCUREMENT PROCEDURE (O-3-88)

Sec. 3.01. - Purpose.

The purpose of this subchapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by this County, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 3.02. - Application.

This Policy applies to contracts for the procurement of supplies, services, and construction entered into by this County after the effective date of this Policy unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing irrespective of its source. When the procurement involves purchase from another governmental entity or the expenditure of Federal or State assistance or contract funds, the procurement shall be conducted in accordance with any applicable Federal or State law and regulation which are not reflected in this policy. Nothing in the policy shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

(O-6-98)

Sec. 3.03. - Definitions.

Architect-engineer and land surveying services. Those professional services within the scope of the practice of architecture, professional engineering or land surveying, as defined by the laws of this State.

Blind trust. An independently managed trust in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust.

Brand name specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

Brand name or equal specifications. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard or quality, performance and other salient characteristics needed to meet County requirements and which provides for the submission of equivalent products.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Change order (unilateral). A written order signed and unilaterally issued by the purchasing agent, directing the contractor to make changes which the "changes" clause of the contract authorizes the purchasing agent to order without the consent of the contractor.

Confidential information. Any information which is available to an employee only because of the employee's status as an employee of this County and is not a matter of public knowledge or is not available to the public on request.

Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.

Contract. All types of County agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

Contract modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

Contractor. Any person having a contract with a public agency of the County.

Cost analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

Cost data. Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost reimbursement contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this subchapter and a fee or profit, if any.

Direct or indirect participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

Disadvantaged business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Employee. An individual drawing a salary from the County, whether elected or not, and any noncompensated individual performing personal services for the County or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of this County.

Financial interest.

- (a) Ownership of any interests or involvement in any relationship from which or as a result of which a person within the past year has received or is presently or in the future entitled to receive more than \$1 per year or its equivalent;
- (b) Ownership of any property or business; or
- (c) Holding a position in a business such as an officer, director, trustee, partner, employee or the like, or holding any position of management.

Gratuity. A payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate family. A spouse, children, parents, brothers and sisters.

Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

Lease. A contract for the use of equipment or other supplies or real property under which title will not pass to the County at any time.

Lease with option. A lease contract with a renewal and/or purchase option whereby title may pass to the County. (Cr. #O-23-95)

Person. Any business, individual, union, committee, club, other organization or group of individuals.

Price analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Price data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Public agency. A public entity subject to or created by local ordinance.

Qualified products list. An approved list of supplies, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the County has determined will meet the applicable specification requirements.

Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror. A person who has the capability in all respects to perform fully the contract requirements and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive bidder. A person who has submitted a bid which conforms in all material respects to the invitation for bids.

Small business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

Small purchases. Any purchase not exceeding \$20,000.00 when made according to the small purchase procedures in § 3.05(3) of this subchapter.

Specification. Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

(O-23-95)

Sec. 3.04. - Purchasing agents.

(1) *Establishment and appointment.*

(a) *Position of purchasing agents.* The purchasing agents shall be the County's principal public purchasing officials.

(b)

Appointment. The purchasing agents shall be the department head of each County department or his designee, unless others are appointed by the County Administrator.

(2) *Authority and duties.*

- (a) *Principal public purchasing officials.* The purchasing agents shall serve as the principal public purchasing official of each department and shall be responsible for the procurement of supplies, services and construction in accordance with this subchapter as well as the management and disposal of supplies, materials and equipment.
- (b) *Duties.* In accordance with this subchapter and subject to the supervision of the County Administrator, the purchasing agents shall:
 - 1. Purchase or supervise the purchasing of all supplies, materials, equipment, services and construction needed by each department.
 - 2. Sell, trade or otherwise dispose of supplies, materials and equipment.
 - 3. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, materials and construction.
- (c) *Operational procedures.* Consistent with this subchapter and with the approval of the County Administrator, the purchasing agents may adopt operational procedures relating to the execution of his duties.

Sec. 3.05. - Source selection and contract formation.

(1) *Competitive sealed bidding.*

- (a) *Conditions for use.* All contracts of this County shall be awarded by competitive sealed bidding, except as otherwise provided in subsections (2), (3), (4), (5) and § 3.10(1) of this subchapter.
- (b) *Proof of responsibility.* Proof of responsibility may be required of all bidders under § 66.0901(2), (3) and (4), Wis. Stats.
- (c) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.
- (d)

Public notice. Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids consonant with the provisions of the State Statutes, which shall provide for a minimum of not less than 14 calendar days. Such notice shall, when required by law, include publication in a newspaper of general circulation. The public notice shall state the date, time and place of bid opening.

- (e) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as the purchasing agents deems appropriate, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.
- (f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alternation or correction, except as authorized in this Policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, as well as compatibility with existing property, equipment, inventory, and/or maintenance costs. Nothing herein shall prevent the Purchasing Agent from standardizing property, inventory, supplies, and equipment if by so doing it is determined by the Purchasing Agent to be in the best interest of the County by minimizing life cycle maintenance and inventory costs. In purchases over \$20,000.00, the County Administrator and the Finance and Property Committee shall approve the purchasing decision.
- (g) *Withdrawal or modification of bids.* Bids may be withdrawn or modified any time prior to the time of opening bids. No bid may be withdrawn or modified after the time of opening bids has passed, however, correction in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake was made, the nature of the mistake and the bid price actually intended. However, downward correction of a bid, which would displace the apparent low bidder, shall only be permitted if the error made and the intended bid price can be

determined solely from the bid documents. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the County Administrator.

- (h) *Rejection of bids.* The County reserves the right to reject any or all bids or parts thereof, and to award to the bidder who, in the judgment of the County, will best serve the County. A bid which has not been prepared according to the instructions set forth in the invitation for bids or which does not include a price which is both adequate and reasonable on each and every item named in the bid may be subject to rejection.
 - (i) *Award.* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.
 - (j) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (2) *Competitive sealed proposals.*
- (a) *Conditions for use.* When the purchasing agents determine that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method as is consistent with State law.
 - (b) *Request for proposals.* Proposals shall be solicited through a request for proposals.
 - (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in subsection (1)(d) (Competitive Sealed Bidding, Public Notice), provided the minimum time shall be 14 calendar days.
 - (d) *Receipt of proposals.* No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award. The register of proposals shall be in the custody of the purchasing agent who shall maintain same.

- (e) *Evaluation factors.* The request for proposals shall set forth the evaluation factors to be used with the County reserving the right to accept or reject proposals if deemed in the best interest of the County.
 - (f) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of and conformance to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the information derived from proposals submitted by competing offerors.
 - (g) *Award.* Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the County taking into consideration past performance, price and the evaluation factors set forth in the Request for Proposals, as well as the criteria set forth in Section 3.05(1)(f) of this Code.
- (3) *Small purchases procedure.* Any contract not exceeding \$30,000.00 may be made in accordance with small purchase procedures, however, purchases shall not be artificially divided so as to constitute a small purchase under this section. If possible, for purchases over \$10,000.00, three businesses shall be solicited to submit quotations from which the lowest acceptable quotation shall be selected. The name of the business submitting a quotation and the date and amount of each quotation shall be recorded and maintained as a public record. The purchasing agent shall maintain a list of all businesses from which quotations were sought.
- (4) *Sole source procurement.* A contract may be awarded without competition when the purchasing agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service or construction item and when allowed by law. The purchasing agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the amount and type of each contract and listing the items procured under each contract.
- (5)

Emergency procurements. The purchasing agent may make or authorize others to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety, if allowed by the State Statutes, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and forwarded to the County Administrator. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract and listing of the items procured under the contract.

(6) *Cancellation of invitations for bids or requests for proposals.* An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when same is in the best interests of the County. The reasons thereof shall be made part of the contract file. Each solicitation issued by the County shall state that the solicitation may be cancelled and that any bid or proposal rejected in whole or in part when in the best interest of the County. Written notice of cancellation shall be sent to all businesses solicited.

(7) *Responsibility of bidders and offerors.*

(a) *Determination of nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the purchasing agent. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

(b) *Right of nondisclosure.* Information furnished by a bidder or offeror pursuant to this section shall not be disclosed by the County outside of the office of the purchasing agent without prior written consent by the bidder or offeror provided, however, that the bidder or offeror as part of and with his bid sets forth in writing the data or information not to be disclosed and the reasons therefor, and the nondisclosure complies with State public records laws.

(8) *Cost or pricing data.*

- (a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$25,000.00 and is to be awarded by competitive sealed proposals [sub. (2)], by sole source procurement authority [sub. (4)] or by architect-engineer and land surveyor selection procedures [§ 3.10(1)].
- (b) *Exceptions.* The submission of cost or pricing data relating to the award of a contract is not required where:
1. The contract price is based on adequate price competition;
 2. The contract price is set by law or regulation; or
 3. It is determined in writing by the purchasing agent that the requirements of par. (a) may be waived and the determination states the reasons for such waiver.
- (c) *Required submissions relating to change orders or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed ten percent of the amount bid.
- (d) *Exceptions.* The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required where:
1. Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or
 2. It is determined in writing by the purchasing agent that the requirements of par. (c) may be waived and the determination states the reasons for such waiver.
- (e) *Certification required.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.
- (f)

Price adjustment provision required. Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the County and the contractor.

- (9) *Cost or price analysis.* If a contract is being funded in whole or in part by assistance from a federal or State agency, a cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract.
- (10) *Types of contracts.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the County may be used, provided that the use of a cost-plus-a-percentage-of-cost contract or a cost-plus-a-percentage-of-construction-cost contract are prohibited. A cost reimbursement contract may be used if it is likely to be less costly to the County than any other type or that it is impracticable to obtain the supply, service or construction item required except under such a contract.
- (11) *Cost reimbursement provisions.* Cost reimbursement provisions shall only obligate the County to reimburse reasonable costs, allocable to the contractor, either directly or indirectly, that are accounted for in accordance with generally accepted accounting principles. If a contract is being funded in whole or in part by assistance from a federal or State agency, then reimbursement to contractors for incurred costs or cost estimates included in negotiated prices shall be subject to appropriate federal cost principles which are codified in subpar. 1-15 of Title 41, Code of Federal Regulations.
- (12) *Lease contracts.* A lease may be entered into provided:
 - (a) It is determined to be in the best interests of the County; and
 - (b) All conditions for renewal and costs of termination are set forth in the lease.
- (13) *Lease with option contracts.* Where a lease with a renewal and/or a purchase option contract is contemplated, whereby title to leased facilities, equipment, or supplies may pass to the County, such lease with renewal and/or purchase option contract may be entered into by the County, provided the purchasing agent prepares a good faith written determination that:
 - (a) All terms are in the best interests of the County;

- (b) All conditions for renewal, costs of termination and costs of exercise of the purchase option(s) are set forth in the lease;
 - (c) All written documents including, but not limited to, leases, contracts, invitations for bids, requests for proposal, and other communications which solicit bids, proposals, or quotes contain a statement reserving the County's unilateral right to terminate the procurement relationship, without any penalty, in the event the County Board fails to appropriate sufficient funds in future budgets with which the procurement relationship could be maintained;
 - (d) Notice of any option provision is included in the original solicitation;
 - (e) Procurement of alternative comparable supplies, equipment, or facilities has been considered and determined to be at greater cost or less benefit to the best interests of the County; and
 - (f) The lease contains the provision that the County Administrator must agree in writing in advance of any exercise of an option to purchase.
- (14) *Approval of accounting system.* Except with respect for firm fixed price contracts, no contract type shall be used unless it has been determined in writing by the purchasing agent that:
- (a) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.
 - (b) The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.
- (15) *Right to inspect plant.* The County may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any level which is pertinent to the performance of any contract awarded by the County.
- (16) *Right to audit records.*
- (a) *Audit of cost or pricing data.* The County may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data pursuant to sub. (8) (Cost or Pricing Data) to the extent that such books, documents, papers and records are pertinent to such cost or pricing data. Any person who receives a contract, change order or contract modification for which

cost or pricing data is required shall maintain such books, documents, papers and records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.

- (b) *Contract audit.* The County shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books, documents, papers and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.
- (17) *Reporting of anticompetitive practices.* When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District Attorney or the State Attorney General by the Corporation Counsel.
- (18) *(County) procurement records.*
 - (a) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the County in a contract file by the purchasing agent.
 - (b) *Retention of procurement records.* All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the County Board and as may be required by the State Statutes. If a contract is being funded in whole or in part by assistance from a federal or State agency, then all procurement records pertaining to that contract shall be maintained for three years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.
- (19) *Purchase of used items.* If the Purchasing Agent and the County Administrator concur that the purchase of used property, equipment, or supplies would be in the best financial interest of the County, nothing herein shall prevent said purchase provided that the procedure set forth in Section 3.05(1) through (5) is complied with. The advertisement or solicitation shall set forth, as far as practicable, the minimum standards for the item to be purchased. For purchases estimated to exceed \$20,000.00,

the prior approval of the Finance and Property Committee shall first be obtained. The County Administrator and the Finance and Property Committee shall advise the County Board of all purchases made pursuant to this section.

(R-61-88; O-23-95; 0-6-98; O-15-06)

Sec. 3.06. - Specifications.

- (1) *Maximum practicable competition.* All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage maximum free and open competition in satisfying the County's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the County by architects, engineers, designers and draftsmen.
- (2) *Qualified products list.* A qualified products list may be maintained by the purchasing agent.
- (3) *Brand name or equal specification.*
 - (a) *Use.* Brand name or equal specifications may be used when the purchasing agent determines that:
 1. No other design or equal specification or qualified products list is available;
 2. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 3. The nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement; or
 4. Use of a brand name or equal specification is in the County's best interest.
 - (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate three or as many different brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
 - (c) *Required characteristics.* Unless the purchasing agent determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry, he shall provide a description of the required design, function or performance characteristics.
 - (d)

Nonrestrictive use of brand name or equal specifications. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

(4) *Brand name specification.*

(a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchasing agent makes a determination that only the identified brand name item or items will satisfy the County's needs. The purchasing agent must be prepared to substantiate the basis for the selection of the chosen material, if only a single material is specified.

(b) *Competition.* The purchasing agent shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under § 3.05(4) (Sole Source Procurement).

(5) *Buy American.* If a contract is being funded in whole or in part by assistance from a federal agency, then the County shall adhere to the appropriate "Buy American" requirements of the federal agency providing the assistance. In all other cases, the purchasing agent shall make every reasonable effort to purchase products manufactured in the United States, as is not inconsistent with lowest responsible bidder statutory requirements.

(6) *Energy conservation.* If a contract is being funded by a federal or State agency, then the County's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

Sec. 3.07. - Construction contract management and contract administration.

(1) *Responsibility for selection of methods of construction contracting management.* The purchasing agent shall have discretion to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the purchasing agent shall consider the County's requirements, its resources and the potential contractors' capabilities. The purchasing agent shall

execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

- (2) *Contract administration.* The purchasing agent shall maintain a contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded and the terms and conditions of the contract.

Sec. 3.08. - Bonds and bid security.

(1) *Bid security.*

- (a) *Requirement for bid security.* Bid security shall be required for all competitive sealed bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this State, the equivalent in cash or otherwise supplied in a form satisfactory to the County.
- (b) *Amount of bid security.* Bid security shall be in an amount equal to at least ten percent of the amount of the bid.
- (c) *Rejection of bids for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.
- (d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in § 3.05(1)(f), no action shall be had against the bidder or the bid security.

(2) *Contract performance and payment bonds.*

- (a) *When required—Amounts.* When a construction contract is awarded, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract:
1. A performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price specified in the contract.
 2. A payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the

contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100 percent of the price specified in the contract.

- (b) *Reduction of bond amounts.* After written notice to and approval by the County Administrator, the purchasing agent is authorized to reduce the amount of the performance and payment bonds.
- (c) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in par. (a) above.
- (d) *Suits on payment bonds—Right to institute.* Any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment, shall have a right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.
- (e) *Suits on payment bonds—Where and when brought.* Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the County or district in which the construction contract was to be performed, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(3)

Copies of bond forms. Any person may request and obtain from the County a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

Sec. 3.09. - Contract clauses and their administration.

(1) *Contract clauses and their administration.*

(a) *Contract clauses.* All County contracts for supplies, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The purchasing agent must inform the County Administrator and Corporation Counsel of issue clauses appropriate for supply, service or construction contracts, addressing at least the following subject:

1. The unilateral right of the County to order in writing changes in the work within the scope of the contract.
2. The unilateral right of the County to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract.
3. Variations occurring between estimated quantities of work in a contract and actual quantities.
4. Defective pricing.
5. Liquidated damages.
6. Specified excuses for delay or nonperformance.
7. Termination of the contract for default.
8. Termination of the contract in whole or in part for the convenience of the County.
9. Suspension of work on a construction project ordered by the County.
10. Site conditions differing from those indicated in the contract or ordinarily encountered, except that differing site conditions clause need not be included in a contract:
 - a. When the contract is negotiated.
 - b. When the contractor provides the site or design; or
 - c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) *Price adjustments.*

1. Adjustments in price resulting from the use of contract clauses required by par.

(a) above shall be computed in one or more of the following ways:

a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

b. By unit prices specified in the contract or subsequently agreed upon;

c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

d. In such other manner as the contracting parties may mutually agree; or

e. In the absence of agreement by the parties, by a unilateral determination by the County of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of § 3.12 (Appeals and Remedies).

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of § 3.05(8) (Cost or Pricing Data).

(c) *Standard clauses and their modification.* The purchasing agent, after informing the County Administrator and Corporation Counsel, may establish standard contract clauses for use in County contracts. If the purchasing agent establishes any standard clauses addressing the subjects set forth in par. (a) above, such clauses may be varied, provided that any variations are supported by a written determination that states the circumstances justifying such variations and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

(2) *Contractor records.* If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

(a) Requiring the contractor and subcontractors at any tier to maintain for six years from the date of final payment under the contract all books, documents, papers and records pertinent to the contract.

(b)

Requiring the contractor and subcontractor at any tier to provide to the County, the federal grantor agency, the Comptroller General of the United States or any of their authorized representatives access to such books, documents, papers and records for the purposes of examining, auditing and copying them.

- (3) *Patents.* If a contract involving research and development, experimental or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:
 - (a) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract.
 - (b) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental or demonstration work.
- (4) *Copyrights and rights in data.* If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals and similar work products developed and paid for under the contract.
- (5) *Notice of federal public policy requirements.* If the contract is being funded in whole or in part by assistance from a federal agency and the contract is subject to one or more federal public policy requirements, such as:
 - (a) Equal employment opportunity;
 - (b) Fair labor standards;
 - (c) Energy conservation;
 - (d) Environmental protection; or
 - (e) Other similar socio-economic programs, then the purchasing agent shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.
- (6) *Fiscal responsibility.* Every contract modification, change order or contract price adjustment under a construction contract with the County in excess of five percent of project construction cost shall be subject to prior approval by the boards, committees

or commissions of authority after receiving a report from the purchasing agent as to the effect of the contract modification, change order or contract price adjustment on the total project budget or the total contract budget.

Sec. 3.10. - Architect-engineer and land surveying services.

- (1) *Applicability.* Architect-engineer and land surveying services shall be procured as provided in this section except as authorized by Sections 3.05(3) (Small Purchases), 3.05(4) (Sole Source) and 3.05(5) (Emergency Procurements).
- (2) *Public announcement.* It is the policy of this County to publicly announce all requirements for architect-engineer and land surveying services and to negotiate such contracts on the basis of demonstrated competence and qualifications and past performance with existing contracts as determined in prequalifying procedures. In the procurement of architect-engineer and land surveying services, the purchasing agent shall request firms to submit a statement of qualifications and performance data.
- (3) *Selection process.* The purchasing agent and/or the County Administrator shall conduct discussions with no less than three firms regarding the contract and shall select from among them the firm deemed most qualified to provide the required services. The selection shall be made in order of preference, based on criteria established and published by the purchasing agent or the County Administrator.
- (4) *Negotiation.* The purchasing agent and/or County Administrator shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the purchasing agent or County Administrator determines to be fair and reasonable to the County. In making this decision, the purchasing agent shall take into account the estimated value, scope, complexity, extension of existing contracts and the professional nature of the services to be rendered. Should the purchasing agent or County Administrator be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the purchasing agent and/or County Administrator determines to be fair and reasonable to the County, negotiations with that firm shall be formally terminated. The purchasing agent and/or County Administrator shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the purchasing agent and/or County Administrator shall formally terminate negotiations. The purchasing agent and/or County Administrator shall then undertake negotiations with the third most qualified firm. Should the purchasing agent and/or County

Administrator be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the purchasing agent and/or the County Administrator shall select additional firms in order of their competence and qualifications, and the purchasing agent and/or County Administrator shall continue negotiations in accordance with this section until an agreement is reached.

(O-23-95)

Sec. 3.105. - Attorney professional services.

- (a) *Retention of legal services.* Except as provided below, the Corporation Counsel shall hire and manage all outside legal counsel engaged to represent and/or advise the county regarding all matters of any character, in which the county is interested.
1. All departments or standing committees wishing to engage outside legal counsel shall contact Marathon County Office of Corporation Counsel.
 2. The County may enter into negotiated contracts without a competitive selection process for the procurement of professional services in individual cases or matters, if the services are to be provided by attorneys who charge on an hourly basis.
 3. When retention of legal services to perform ongoing services in a type of matter, such as bond counsel or prosecution services, is required, the procurement policy for professional services shall be followed.
 4. The Corporation Counsel may act in concert with any Department Head or chairperson whose department, committee or other governance subgroup is affected by said legal matters and shall have authority to sign engagement letters on behalf of the County.
- (b) *Limitation of fees.* Counsel who are designated or engaged by the county's insurance carriers shall be monitored by Corporation Counsel, but shall be paid by said insurance carriers. In all other matters, where the aggregate legal fees exceed the initial fee agreement or \$25,000.00, whichever is less, the Corporation Counsel shall notify the Human Resource/Finance Committee of the status of the matter and seek approval for additional expenditures. Any contract for services or letter of engagement shall reference this limitation on fees.
- (c) *Billing frequency and format.*
1. Time charges. Actual time should be billed in one-tenth (.10) hour increments.
 2. Billing frequency. Invoices for legal services or expense shall be invoiced every 30

days from the date of initial suit assignment and monthly thereafter.

3. Invoices submitted more than 60 days after the last date of legal services will require explanation of the billing delay to the Corporation Counsel.
 4. Invoices submitted more than one year after the last date of legal services or expense may be rejected.
- (d) *Filing of agreements.* Attorney professional services contracts or agreements should be placed on file with the County Clerk.
- (e) *Conflict of interest.* In cases where the Corporation Counsel has a conflict, the County Administrator shall act pursuant to the procedure set forth above. In cases where both the Corporation Counsel and the Administrator have a conflict, the County Board Chair shall act pursuant to the procedure set forth above.

(O-26-16)

Sec. 3.11. - Debarment or suspension.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the County boards, committees and commissions and the County Administrator and/or Corporation Counsel is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the County Administrator and Corporation Counsel, the purchasing agent, with the approval of the County Administrator, is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person engaged in any activity which might lead to debarment. The causes for debarment include:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under State and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business honesty which currently, seriously and directly affects responsibility as a County contractor.
- (3) Conviction under State or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Violation of contract provisions, as set forth below, of a character which is regarded

by the purchasing agent to be so serious as to justify debarment action:

- (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- (5) Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for any cause listed in this subchapter.
- (6) For violation of the ethical standards set forth in § 3.14 (Ethics in Public Contracting).

Sec. 3.12. - Appeals and remedies.

(1) *Bid protests.*

- (a) *Right to protest.* If unsuccessful bidder, offerer or contractor can show good cause why an award of contract was not in the best interest of the County, a formal protest must be filed with the purchasing agent, in writing, within five business days of the date of notice of award. If the bidder, offerer or contractor is not satisfied with the results of his appeal to the purchasing agent, who shall respond in writing to the protest within five business days of the date of receipt of the protest, the bidder, offerer or contractor may appeal the decision to the County Administrator, in writing, within five business days of the decision. The County Administrator shall respond in writing within five business days of the date of receipt thereof. A failure to respond to a protest within such time shall be deemed a denial of same. The decision of the County Administrator shall be final, but shall not preclude appeal by the bidder, offerer or contractor to the County Administrative Review Board, provided timely notice of such appeal is made consistent with Ch. 68, Wis. Stats.
- (b) *Stay of procurements during protests.* In the event of a timely protest under par. (a) above, the purchasing agent shall not proceed further with the award of the contract until all administrative and judicial remedies have been exhausted or until the County Administrator makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the County.

(c) *Entitlement to costs.* In addition to any other relief, when a protest is sustained and the protesting bidder or offerer should have been awarded the contract under the solicitation but is not, then the protesting bidder or offerer shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

(2) *Contract claims.*

- (a) *Decision of the purchasing agent.* All claims by a contractor against the County relating to a contract, except bid protests, shall be submitted in writing to the purchasing agent for a decision. Claims include, without limitation, controversies arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or revision.
- (b) *Notice to the contractor of the purchasing agent's decision.* The decision of the purchasing agent shall be promptly issued in writing and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached and shall inform the contractor of its appeal rights under par. (c) below.
- (c) *Finality of purchasing agent's decision; contractor's right to appeal.* The purchasing agent's decision shall be final and conclusive unless, within five business days from the date of receipt of the decision, the contractor mails or otherwise delivers a written appeal to the County Administrator and submits a copy thereof to the County Clerk.
1. The County Administrator shall issue a written decision within ten business days and shall immediately mail or otherwise furnish a copy of same to the contractor. The decision shall state the reasons therefor and will be final and conclusive unless appealed as outlined below.
 2. If the contractor wishes further review of the County Administrator's decision, he must mail or otherwise deliver a written appeal to the County Clerk within five business days from the date of receipt of the Administrator's decision.
 3. If the contractor wishes further review of the Administrator's decision, he must mail or otherwise deliver a written appeal to the County Clerk for review by the County Administrative Review Board. To qualify for review of the appeal by such Board, the contractor must make timely notice of his appeal consistent with administrative review procedures and as further consistent with Ch. 68,

Wis. Stats. All appeals heard by this Board will be conducted consistent with the above referenced ordinance and statutes. The Board's decision shall be written, final and rendered within the time period specified by such procedure.

- (d) *Failure to render timely decision, exhaustion of administrative remedies required before court action.* Failure by the purchasing agent, County Administrator, boards, committees or Administrative Review Appeals Board to render a decision in the time period specified, unless a longer time period is mutually agreed in writing, shall be deemed an automatic denial entitling the contractor to proceed to his remaining remedy, if any. All administrative remedies must be exhausted under this subchapter before the matter will be deemed ripe for court review.
- (3) *Authority of the purchasing agent to settle bid protests and contract claims.* The purchasing agent, with the approval of the County Administrator, is authorized to settle any protest regarding the solicitation of award of a County contract, or any claims arising out of the performance of a County contract, prior to an administrative appeal or commencement of an action in a court of competent jurisdiction.
- (4) *Remedies for solicitation or awards in violation of law.*
 - (a) *Prior to bid opening or closing date for receipt of proposals.* If, prior to bid opening or the closing date for receipt of proposals, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation is in violation of federal, State or municipal law, then the solicitation shall be cancelled or revised to comply with applicable law.
 - (b) *Prior to award.* If, after bid opening or closing date for receipt of proposals, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, State or municipal law, then the solicitation or proposed award shall be cancelled.
 - (c) *After award.* If, after an award, the purchasing agent or the County Administrator, after consultation with the Corporation Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:
 - 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. The contract may be ratified and affirmed, provided it is determined that so doing is in the best interests of the County; or
 - b.

The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the County.

Sec. 3.13. - Assistance to small and disadvantaged businesses.

(1) *Solicitation of small and disadvantaged businesses.* The purchasing agents shall assure that both small and disadvantaged businesses are solicited on each procurement for which such businesses may be suited.

(2) *Small, women-owned and minority business enterprises.*

(a) *Expand participation.* If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agents shall take affirmative steps to assure that small, women-owned and minority businesses are utilized when possible as sources of supplies, services and construction items.

(b) *Examples of affirmative steps.* Affirmative steps to be taken may include:

1. Including qualified small, women-owned and minority businesses on solicitation lists.
2. Assuring that small, women-owned and minority businesses are solicited whenever they are potential sources.
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, women-owned and minority business participation.
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned and minority business.
5. Using the services and assistance of the Small Business Administration, the Office of the Minority Business Enterprise of the Department of Commerce and the Community Services Administration as may be practicable.

(c) *Pass-through to subcontracts.* A contractor awarded a federally funded contract shall also take affirmative steps as listed in par. (b) above in the award of its subcontracts.

(3)

Labor surplus area businesses. If a contract is being funded in whole or in part by assistance from a federal agency, the purchasing agent is encouraged to procure supplies, services and construction items from businesses located in labor surplus areas.

Sec. 3.14. - Ethics in public contracting.

- (1) *Criminal penalties.* To the extent that violations of the ethical standards of conduct set forth in this section constitute violations of the State Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this section. Criminal, civil and administrative sanctions against employees or nonemployees which are in existence on the effective date of this subchapter shall not be impaired.
- (2) *Elected official and employee conflict of interest.*
 - (a) It shall be unethical for any elected or appointed official or employee to participate directly or indirectly in a procurement when the elected official or employee knows that:
 1. The elected official, employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or
 2. Any other person, business or organization with whom the employee or any member of an employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
 - (b) An elected official, employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (3) *Gratuities and kickbacks.*
 - (a) *Gratuities.* It shall be unethical for any person to offer, give or agree to give any elected official, employee or former employee or for any elected official, employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling,

determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- (b) *Kickbacks.* It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- (c) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and referred to in every solicitation therefor.
- (4) *Prohibition against contingent fees.* It shall be unethical for a person, or to retain a person, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- (5) *Contemporaneous employment prohibited.* It shall be unethical for any employee who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.
- (6) *Waivers from contemporaneous employment prohibition and other conflicts of interest.* The County Board in the case of the County Administrator, and the County Administrator in the case of all other County employees may grant a waiver from the employee conflict of interest provision [sub. (2)] or the contemporaneous employment provision [sub. (5)] upon making a written determination that:
 - (a) The contemporaneous employment or financial interest of the County employee has been publicly disclosed.
 - (b) The County employee will be able to perform his procurement functions without actual or apparent bias or favoritism.
 - (c) The award will be in the best interests of the County.
- (7) *Use of confidential information.* It shall be unethical for any elected official, employee or former employee knowingly to use confidential information for actual or anticipated personal gain.
- (8) *Sanctions.*

- (a) *Employees.* The County Board in the case of the County Administrator with respect to subpars. 1. and 2. and/or subpar. 3. below, and the County Administrator in the case of all other County employees may impose any one or more of the following sanctions on an employee for violations of the ethical standards in this section:
1. Oral or written warnings or reprimands;
 2. Suspension with or without pay for specified periods of time; or
 3. Termination of employment.
- (b) *Nonemployees.* The County Board may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards:
1. Written warnings or reprimands;
 2. Termination of contracts; or
 3. Debarment or suspension as provided in § 3.11.
- (9) *Recovery of value transferred or received in breach of ethical standards.*
- (a) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this subchapter by an employee or a nonemployee may be recovered from both employee and nonemployee.
- (b) *Recovery of kickbacks by the county.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the County and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

(O-39-91)

Sec. 3.15. - Administrative rules and regulations; promulgation.

The County Administrator is hereby authorized to promulgate administrative rules and regulations to effect efficient, effective and timely implementation of this subchapter. Such authorization shall include, but not be limited to, procedures, methods, personnel, work assignments and work stations.

Sec. 3.16. - Application.

- (1) This subchapter applies to all departments, officers, committees, agencies, boards and commissions of the County, as well as all entities directly or indirectly using County provided or County channeled funds, as well as any of the above hereinafter created, organized or reorganized.
- (2) Should any provision of this subchapter be held invalid or unenforceable by a court of competent jurisdiction, or appear to be so based upon review by authorized legal counsel of County, the remainder of this subchapter, or the application of such term or provision to persons and circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this subchapter shall be valid and shall be enforceable to the fullest extent provided and permitted by law.
- (3) It is intended that this subchapter shall be interpreted in a manner consistent with and applied in harmony with current and future State and federal statutes, rules and regulations.

Sec. 3.17. - Participation in the Central Wisconsin Public Purchasing Association.

- (1) *Intent.* The Office of County Administrator has determined some procurements of supplies might be most economically obtained through County affiliation with a group known as Central Wisconsin Public Purchasing Association (CWPPA), which is largely comprised of various elected and appointed officials and employees from various area units and departments of local and state government.
- (2) *Participation.* The County Board of Supervisors ordains as follows:
 - (a) Authorizing, affirming and ratifying the participation of a Marathon County representative/member in the Central Wisconsin Public Purchasing Association (CWPPA).
 - (b) Directing that any County purchases contemplated or made through CWPPA be consummated only after a specific determination by the County Administrator or his designee to CWPPA that the requirements of General Code § 3.01 et seq., County Procurement Procedure, have been fully complied with in all respects, regardless of which association member's governmental unit or department acts as designated lead agency for handling a given procurement.
 - (c)

Directing further that the County Administrator make specific determinations, in consultation with the Corporation Counsel, of any legal requirements that require said association to comply with State open meetings and public records laws, and further insure these are duly adhered to by said CWPPA and Marathon County's representative/member of same where required.

- (d) Directing further that the County Administrator work with the Corporation Counsel in assuring the reduction to writing by Marathon County and other CWPPA governmental members of any generally understood agreements between them under §§ 59.07(7) and (11), and 66.30, Wis. Stats., and any other similar and applicable laws.

(R-14-95)

Secs. 3.18, 3.19. - Reserved.

Standard Terms And Conditions

- 1.0 SPECIFICATIONS:** The specifications in any request for bids or proposal which forms the subject of this contract are the minimum acceptable. When specific manufacturer and model numbers are used, they are to establish a design, type of construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed/provided, they must be identified by manufacturer, stock number, and such other information necessary to establish equivalency. Marathon County shall be the sole judge of equivalency. _____ are cautioned to avoid bidding/proposing alternates to the specifications which may result in rejection of their bid/proposal.
- 2.0 DEVIATIONS AND EXCEPTIONS:** Deviations and exceptions from original text, terms, conditions, or specifications shall be described fully, on the _____'s letterhead, signed, and attached to the response to request. In the absence of such statement, the bid/proposal shall be accepted as in strict compliance with all terms, conditions, and specifications and the _____s shall be held liable.
- 3.0 ACCEPTANCE-REJECTION OF BIDS OR PROPOSALS:** Marathon County reserves the right to accept or reject any or all bids/proposals, to waive any technicality in any bid/proposal submitted, and to accept any part of a bid/proposal as deemed to be in the best interests of Marathon County.
- Bids/proposals MUST be date and time stamped by the office of the soliciting purchasing agent on or before the date and time that the bid/proposal is due. Bids/proposals date and time stamped in another office will be rejected. Receipt of a bid/proposal by the mail system does not constitute receipt of a bid/proposal by the purchasing agent's office
- 4.0 METHOD OF AWARD:** Award of bids shall be made to the lowest responsible, responsive bidder unless otherwise specified. Award of proposals shall be subject to criteria set for in the request for proposal.
- 5.0 QUALITY:** Unless otherwise indicated in the request, all material shall be first quality. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without specific prior written approval by the Marathon County.
- 6.0 WARRANTY:** Unless otherwise specifically stated by the bidder/proposer, equipment purchased as a result of this request shall be warranted against defects by the bidder/proposer for one (1) year from date of receipt. The equipment manufacturer's standard warranty shall apply as a minimum and must be honored by the contractor.
- 7.0 DELIVERY:** Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise specified.
- Failure of the _____ to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the _____ liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 8.0 ORDERING:** Purchase orders shall be placed directly to _____ by authorized departments or purchasing agents who have issued the request for bids or proposal. No other purchase orders are authorized.
- 9.0 PAYMENT TERMS AND INVOICING:** Marathon County normally will pay properly submitted _____ invoices within thirty (30) days of receipt providing goods and/or services have been delivered, installed (if required), and accepted as specified.
- 9.1 Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.
- 9.2 A good faith dispute creates an exception to prompt payment.
- 10.0 TAXES:** Marathon County and its departments are exempt from payment of all federal tax and Wisconsin state and local taxes on its purchases except Wisconsin excise taxes as described below.
- Marathon County, including all its departments, 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 Wisconsin sales or use tax on its purchases. Marathon County may be subject to other states' taxes on its purchases in that state depending on the laws of that state. Contractors performing construction activities are required to pay state use tax on the cost of materials.
- 11.0 CONTRACT INTEGRATION:** These Standard Terms and Conditions shall apply to any contract or order awarded as a result of a request except where special requirements are stated elsewhere in the request; in such cases, the special requirements shall apply
- The documents constituting the contract between the Marathon County and _____ are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence in the following order: Change Orders (with the most recent taking precedence); Contract Document Amendments; the Contract Document as described in this signed Agreement; Request for Proposal Addenda; Request for Proposal; and Firm's Proposal. Any terms of any other documents concerning this agreement are superseded by the terms set forth herein.
- 12.0 APPLICABLE LAW AND COMPLIANCE:** This contract shall be governed under the laws of the State of Wisconsin. _____ shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. Marathon County reserves the right to cancel this contract if _____ fails to follow the requirements of s. 77.66, Wis. Stats., and related statutes regarding certification for collection of sales and use tax.

13.0 SAFETY REQUIREMENTS: All materials, equipment, and supplies provided to Marathon County must comply fully with all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

13.1 _____ shall execute and maintain its work so as to avoid injury or damage to any persons or property. _____ shall comply with the requirements and specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its work, _____ shall, at all times, exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed and be in compliance with all applicable federal, state and local statutory and regulatory requirements including Wisconsin Labor Code and the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, including the obligation to conduct safety inspections to verify said compliance by its employees, agents, and/or subcontractors.

13.2 _____ is specifically notified that it is subject to federal requirements listed under Title 29, Chapter 15 of the United States Code (Occupational Health and Safety Act) by virtue of its contract with Marathon County, a public entity. _____ shall provide a similar notice to all its subcontractors.

13.3 SAFETY DATA SHEET: If any item(s) on an order(s) resulting from this award(s) is a hazardous chemical, as defined under 29CFR 1910.1200, provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).

14.0 INSURANCE REQUIREMENTS: _____ shall not commence work under this contract until all insurance required under this paragraph is obtained, and such insurance has been approved by Marathon County, nor shall _____ allow any subcontractor to commence work on their subcontract until all similar insurance requirements have been obtained and approved.

14.1 Maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in the work. In case any work is sublet, _____ shall require the subcontractor similarly to provide statutory Workers' Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by _____.

14.2 General Liability, Professional Liability and Property Damage Insurance. _____ shall secure and maintain in force throughout the duration of this contract such General Liability, Professional Liability (if necessary) and Property Damage Insurance as shall protect itself and any subcontractor performing work covered by this contract from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by _____, or by any subcontractor or by anyone directly or indirectly employed by either of them; and the amount of such insurance shall be as follows:

- Comprehensive General Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and Property Damage.
- Professional Liability Coverage, \$1,000,000 per occurrence and \$2,000,000 in aggregate.
- Automobile Liability \$1,000,000 per occurrence and \$2,000,000 in aggregate for bodily injury and property damage.
- Excess Liability Coverage, \$1,000,000 over the General Liability and Automobile Liability Coverage.
- If aircraft are used in conjunction with this project, \$2,000,000 per occurrence and in aggregate for bodily injury and property damage.

14.3 Marathon County reserves the right to require higher or lower limits where warranted.

14.4 Marathon County reserves the right to require additional security, including, but not limited to, bid bonds or performance bonds as specifically set forth in its request for bids or proposals.

14.5 PROOF OF INSURANCE: _____ shall furnish the County with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that _____ meets the insurance requirements identified above. The Certificates of Insurance shall include a provision prohibiting cancellation of said policies except upon 30 days prior written notice to the County and specify the name of the contract or project covered. The Certificate of Insurance shall be delivered to the Authorized Purchasing Agent, with a copy of the Certificate of Insurance to be delivered to the Marathon County Risk Manager for approval prior to the execution of this contract. Upon renewal of the required insurance, and annually thereafter, the County shall receive a new Certificate of Insurance for three years after completion of the project. The Certificates shall name Marathon County as an additional insured and describe the contract by name and or identification number in the "Description of Operations" section of the form.

15.0 CANCELLATION / TERMINATION: Marathon County reserves the right to:

15.1 NONAPPROPRIATION OF FUNDS. Cancel any contract in whole or in part without penalty due to nonappropriation of funds or for failure of the contractor to comply with terms, conditions, and specifications of this contract.

15.2 Terminate this contract, for the County's convenience, at any time by a notice in writing from the County to _____ by certified mail. If the Contract is terminated by the County as provided herein, _____ shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of _____ covered

by this Contract, unless payments of compensation have previously been made.

16.0 CONTRACT MODIFICATIONS: The scope of the services to be performed under this Contract may be amended or supplemented by mutual written agreement between the parties to the Contract. This amendatory provision shall not operate to prevent Marathon County from exercising its reserved right to establish reasonable time schedules for any of the work or services to be performed by or deliveries to be received from _____ hereunder. Furthermore, this amendatory provision shall not operate to prevent the County from canceling any of the services not yet performed or any deliveries not yet made at the time notice is given to _____ of the cancellation of such services or portion of the work to be performed hereunder.

17.0 ASSIGNMENT: No right or duty in whole or in part of the _____ under this contract may be assigned or delegated without the prior written consent of Marathon County.

18.0 PATENT INFRINGEMENT: The _____ selling articles to Marathon County as described herein guarantees the articles were manufactured or produced in accordance with applicable federal labor laws. Further, that the sale or use of the articles described herein will not infringe any United States patent. The contractor covenants that it will at its own expense defend every suit which shall be brought against Marathon County (provided that such contractor is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles, and agrees that it will pay all costs, damages, and profits recoverable in any such suit.

19.0 PUBLIC RECORDS ACCESS: Marathon County is a political subdivision of the State of Wisconsin and as such is subject to the Wisconsin Public Records Law. It is the policy of Marathon County to maintain an open and public process in the solicitation, submission, review, and approval of procurement activities.

Bid openings are public unless otherwise specified. Evaluations of responses to requests for proposals are subject to further discussion, clarification and negotiation. Records of bids and responses to requests for proposal will not be available for public inspection prior to issuance of the award of the contract.

20.0 PROPRIETARY INFORMATION: Any restrictions on the use of data contained within a response to request, must be clearly stated in the bid/proposal itself. Proprietary information submitted in response to a request will be handled in accordance with the Wisconsin Public Records Law. Proprietary restrictions normally are not accepted. However, when accepted, it is _____'s responsibility to defend the determination in the event of an appeal or litigation.

20.1 Data contained in a bid/proposal, all documentation provided therein, and innovations developed as a result of the contracted commodities or services cannot be copyrighted or patented. All data, documentation, and innovations become the property of Marathon County.

20.2 Any material submitted by _____ in response to Marathon County's request that the

vendor considers confidential and proprietary information and which qualifies as a trade secret, as provided in s. 19.36(5), Wis. Stats., or material which can be kept confidential under the Wisconsin Public Records Law, must be identified and include citation to the specific provisions of law that preclude disclosure and any factual or background information necessary to establish that the identified provisions of the law apply to that particular information. Bid/proposal prices cannot, under any circumstances, be held confidential.

20.3 In the event Marathon County becomes involved in litigation due to _____'s refusal of permission to release information identified as confidential or proprietary, _____ agrees to indemnify, defend and hold harmless Marathon County for any costs associated with said litigation.

21.0 CONFIDENTIALITY OF MARATHON COUNTY'S DATA: In the event work conducted under this contract requires _____ to have access to Marathon County's database via Internet, direct contact or other connection to allow the provision of installation, support and maintenance services, _____ agrees to keep all such data confidential and to execute any reasonable agreement to assure Marathon County that _____ will comply with all state and federal confidentiality laws and/or regulations. These restrictions herein shall survive the termination of this contract, regardless of the reason for termination, and shall continue in full force and effect and shall be binding upon _____ or its agents, employees, successors, assigns or subcontractors. _____ shall defend and incur all costs, if any, for actions that arise as a result of noncompliance by _____, its agents, employees, successors, assigns and subcontractors regarding the confidentiality restrictions herein.

22.0 PROMOTIONAL ADVERTISING / NEWS RELEASES: Reference to or use of Marathon County, any of its departments, agencies or other subunits, or any county official or employee for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of Marathon County. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of Marathon County's purchasing agent.

23.0 MUTUAL HOLD HARMLESS/INDEMNIFICATION _____ hereby agrees to release, indemnify, defend, and hold harmless Marathon County, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of _____'s officers, officials, employees, agents or assigns.

Marathon County hereby agrees to release, indemnify, defend, and hold harmless _____, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of

action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of Marathon County's officers, officials, employees, agents or assigns.

Marathon County does not waive, and specifically reserves, its rights to assert any and all affirmative defenses and limitations of liability as specifically set forth in Wisconsin Statutes, Chapter 893 and related statutes.

24.0 FORCE MAJEURE: Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

25.0 GRATUITIES AND KICKBACKS

It shall be unethical for any person to offer, give, or agree to give any elected official, employee or former employee, or for any elected official, employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer for employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the contents of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceedings or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract, or order.

26.0 DISPUTE RESOLUTION: This Contract and the performance of the parties' obligations hereunder will be governed by and construed and enforced in accordance with the laws of the State of Wisconsin, including conflict of laws provisions. _____ consents to personal jurisdiction in the State of Wisconsin. The venue of any action hereunder shall be in Marathon County, Wisconsin.

If a dispute related to this agreement arises, all parties shall attempt to resolve the dispute through direct discussions and negotiations. If the dispute cannot be resolved by the parties, and if all parties agree, it may be submitted to either mediation or arbitration. If the matter is arbitrated, the procedures of Chapter 788 of the Wisconsin Statutes or any successor statute shall be followed. If the parties cannot agree to either mediation or arbitration, any party may commence an action in court as set forth above. If a lawsuit is commenced, the parties agree that the dispute shall be submitted to alternate dispute resolution pursuant to §802.12, Wis. Stats., or any successor statute.

Unless otherwise provided in this contract, the parties shall continue to perform according to the terms and conditions of the contract during the pendency of any litigation or other dispute resolution proceeding.

27.0 INDEPENDENT CONTRACTOR STATUS: The parties hereto agree that Contractor, its officers, agents and employees, in the performance of this Contract, shall act in the capacity of an independent contractor and not as an officer, employee or agent of Marathon County. The Contractor shall not be entitled to any of the rights, benefits, salaries, wages or fringe benefits which employees of Marathon County are eligible to receive. No federal, state, or local taxes or social security deductions or contributions shall be made by Marathon County on behalf of the Contractor. Neither Marathon County nor Contractor will represent itself as the agent or legal representative of the other or as partner or joint venturers for any purpose whatsoever, and neither shall have any right to create or assume any obligation of any kind, express or implied, for or on behalf of the other in any way whatsoever. Furthermore, Contractor agrees to take such steps as are necessary to ensure that each of its subcontractors, if any, will not be considered to be an agent, servant, joint venturer with, or partner of, Marathon County.

28.0 NON-DEBARMENT CLAUSE: _____ hereby certifies that neither it nor any of its principal officers or officials has ever been suspended or debarred, for any reason whatsoever, from doing business or entering into contractual relationships with any governmental entity. _____ further agrees and certifies that this clause shall be included in any subcontract of this contract. . Marathon County also reserves the right to cancel this contract with any federally debarred contractor or a contractor that is presently identified on the list of parties excluded from federal or State of Wisconsin procurement and non-procurement contracts.

29.0 STATEMENT OF COMPLIANCE: _____ has carefully reviewed Marathon County's required contract language, as set forth in the Request for Proposal/Bid pertaining to termination of contract, change orders, gratuities and kickbacks, non-appropriation of funds, hold harmless/indemnification, insurance requirements/proof of insurance, dispute resolutions, and non-debarment, and is in full compliance with all statements and requirements.

30.0 WAIVER/SEVERABILITY: No waiver of any default hereunder shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this contract. If any provision of this contract is held invalid by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and said provision shall continue to apply to the extent allowed by said court or, if not so allowed, be deemed severed from this contract entirely.

RESOLUTION # R - 34 - 21
RESOLUTION APPROVING CITY-COUNTY INFORMATION TECHNOLOGY COMMISSION
INTERGOVERNMENTAL AGREEMENT AND OPERATING AGREEMENT

WHEREAS, Marathon County, the City of Wausau, and North Central Health Care have an existing agreement, pursuant to Wis. Stat. § 66.0301, that establishes a City-County Information Technology Commission to implement and operate a cooperative data and management information system; and

WHEREAS, the City-County Information Technology Commission Board of Commissioners has proposed certain revisions to the Intergovernmental Agreement and Operating Agreement of the City-County Information Technology Commission that require approval of the Marathon County Board of Supervisors. Those proposed revisions are attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Marathon does hereby approve the attached changes to the City-County Information Technology Commission Intergovernmental Agreement and Operating Agreement.

Dated the 25th day of May, 2021.

BOARD OF COMMISSIONERS, CITY-COUNTY INFORMATION TECHNOLOGY COMMISSION

/s/ Kurt Gibbs /s/ Lance Leonhard /s/ Katie Rosenberg /s/ Maryanne Groat /s/ Michael Loy /s/ Thomas Boutain

Fiscal Impact: The citizen commissioner to the Board of Commissioners may require the payment of a per diem amount as well as mileage reimbursement. These rates would be set during the annual budget approval process for the City-County Information Technology Commission.

5/4/2021

**CITY-COUNTY INFORMATION TECHNOLOGY COMMISSION
INTERGOVERNMENTAL AGREEMENT**

THIS AGREEMENT, effective April 6th, 2021, is made between Marathon County, the City of Wausau, and the North Central Health Care governmental units located in the State of Wisconsin, an establishment of a commission in accordance with Wis. Stats., §66.0301 as follows:

ARTICLE I Name

and Office

The name of this commission shall be the City-County Information Technology Commission. The principal office of the commission shall be at 407 Grant Street, Wausau, Wisconsin 54403.

ARTICLE II

Purpose

The purpose of the City-County Information Technology Commission (CCITC) is to provide for the implementation and operation of a cooperative data and management information system at a reasonable cost to foster efficiency in the provision of services under the direction of the governing Board of Commissioners.

ARTICLE III

Definition of Terms

For the purpose of this agreement, the following definitions shall be in effect:

"Commission" means the City-County Information Technology Commission.

"Board" means the Board of Commissioners of the City-County Information Technology Commission.

"Governmental Unit" means any city, village, township, county, school district or other political subdivision as sanctioned by law.

"Partner" means the governmental units which are parties to this agreement.

"Software" means computer programs, forms designs, user manuals and associated documentation.

"Enterprise equipment and systems" means all forms of technology in hardware and software that CCITC uses to provide services such as networking, security, storage, servers, etc to all Partners.

ARTICLE IV

Additional Partners

Section 1: Additional governmental units desiring to be Partners of this Commission shall adopt and execute a copy of this agreement and pay the established dues and charges upon approval of the existing Partners' governing boards.

ARTICLE V

Board of Commissioners

Section 1: The Commission shall be governed by a Board of Commissioners to be known as the City-County Information Technology Commission Board.

Section 2: The City-County Information Technology Commission Board shall consist of seven (7) Commissioners. The Commissioners shall be the persons occupying the following positions:

- a. City of Wausau Mayor or Designee.
- b. City of Wausau Finance Director.
- c. Marathon County Board of Supervisors' Chairman or Designee.
- d. Marathon County Administrator or Designee.
- e. North Central Health Care Commission CEO or designee
- f. North Central Health Care designee. The North Central Health Care CEO will be the designator
- g. The seventh Commissioners shall be appointed by a majority of the other six (6) Commissioners. Once appointed by the CCITC Board, the citizen commissioner shall be confirmed by the Marathon County Board, The city of Wausau Common Council and the

North Central Health Care board.

Section 3: The citizen Board Commissioner may be removed by majority vote of the Marathon County Board of Supervisors, the City of Wausau Common Council, and the North Central Health Care Board.

Section 4: The citizen Commissioner shall serve for a term of two (2) years . Beginning in April 2021, the non-citizen members shall recruit candidates for the citizen position and recommend the candidate for appointment by each of the member entities at least one week before the May CCITC Board meeting. Commissioners may be re-appointed to additional terms.

Section 5: The term of the citizen Commissioners shall end at the time of the May Marathon County Board of Supervisors meeting held in the middle of the term of the chairman of the Marathon County Board of Supervisors.

Section 6: In the event of a need to fill the position mid-term, an interim appointment will be made. If the opening is within 9 months of the end of the term, the CCITC board will appoint an interim commissioner to serve out the remainder of the term.

Section 7: The citizen commissioner shall be paid a per diem for each meeting attended, whether in person or virtual. The per diem amount should be set during the annual budget approval process for CCITC rates. The member would also be eligible for mileage reimbursement.

ARTICLE VI

Powers of the Board of Commissioners

Section 1: Subject to rules promulgated under the Wisconsin Statutes and Marathon County/City of Wausau ordinances and goals established by the City-County Information Technology Commission Board, the Board shall provide for:

- a. Continuous planning, development and evaluation of programs and services for all service groups;
- b. Establish long-range goals and intermediate range plans, detail priorities and estimate costs;
- c. Develop new resources necessary to carry out its purposes;
- d. Appoint a Director of the Commission on the basis of recognized and demonstrated interest in and knowledge of information systems, with due regard to training, experience, administrative ability, and general qualifications and fitness for the performance of the duties of the Director;

- e. Fix the salaries of personnel employed;
- f. Enter into contracts to render to or secure services, including professional consultation services;
- g. Perform all functions required by applicable law;
- h. To acquire, hold and dispose of property both real and personal as the Board deems necessary, to accumulate and maintain reasonable working capital reserves and invest and reinvest these funds subject to the applicable laws;
- i. Shall cause an annual independent audit of the books to be made and shall make a monthly financial accounting, and report to the Partners;
- j. The Board may purchase public liability insurance and such other bonds or insurance as it may deem necessary;
- k. The Board may adopt such rules and procedures as necessary with regard to its process and actions.
- l. Annually review and adopt a charge-back system.

Section 2: The Board may accept gifts, apply for and use grants or loans of money or other property from the state, or any other governmental unit or organization and may enter into agreements required in connection therewith and may hold, use and dispose of such monies or property in accordance with the terms of the gift, grant, loan or agreement.

Section 3: The Board may exercise any other power necessary and incidental to the accomplishment of the general purpose.

ARTICLE VII Board

Procedures

Section 1: The annual meeting of the Board shall be held in April at the time and place designated by the Chairman.

Section 2: The regular meetings of the Board shall be held monthly as scheduled by the Chairman at the previous meeting.

Section 3: Special meetings of the Board shall be called by the Secretary upon request of the Chairman.

Section 4: Notice of regular and special meetings of the Board shall be given at least twenty-four (24) hours before such meeting in a manner which complies with the Wisconsin Open Meeting Law.

Section 5: At all meetings of the Board, the presence of five (5) Commissioners shall constitute a quorum and action shall be taken by majority vote of Commissioners present and constituting a quorum.

Section 6: All parliamentary practice in conducting the business of the meeting not herein specifically provided for shall follow [the most current edition of] Robert's Rules of Order[newly revised].

Section 7: Board Commissioners that may be required to travel to meetings outside of Marathon County shall be reimbursed for expenses subject to obtaining prior approval from the Board. Approval of expenses shall be made by the Board upon review of an itemized statement submitted by the Commissioner.

ARTICLE VIII Board

Committees

Section 1: The Chairman of the Board may appoint such committees as deemed necessary to carry out functions and responsibilities of the Board subject to approval by the Board.

Section 2: The Chairman may appoint as members to such committees persons who are qualified to serve but who are not Commissioners of the Board subject to approval of the Board.

ARTICLE IX

Officers

Section 1: The officers of the Board shall be Chairman, Vice Chairman, Secretary-Treasurer, and shall be elected by the Board at its annual meeting.

Section 2: Nomination for each office of the Board shall be made by the Commissioners of the Board at the annual meeting of the Board.

Section 3: Officers shall be elected by the Commissioners for each office. The nominee receiving the most votes for each office shall be elected.

Section 4: The term of office of each officer shall be one (1) year or until a successor shall be

elected.

Section 5: The Chairman shall preside at all meetings of the Board.

Section 6: The Vice Chairman shall, in the absence or incapacity of the Chairman, perform the duties of the Chairman.

Section 7: The Secretary-Treasurer shall be responsible for the minutes of the Board and shall assure that notices of all meetings of the Board are given, and shall perform all usual duties of the office of Treasurer.

ARTICLE X

Powers and Duties of Director

Section 1: All of the administrative duties of managing, operating, maintaining, and improving the services shall be vested in the Director subject to such delegation of authority as is consistent with Wisconsin Statutes.

Section 2: In consultation and agreement with the Board, the Director shall prepare:

- a. An annual plan and budget of all funds necessary for providing services, in which priorities and objectives for the year are established as well as modifications of long-range objectives;
- b. Intermediate-range plans and budgets;
- c. An annual report of the operations of the services.

Section 3: The Director shall manage the implementation of the plans as approved by the Board.

Section 4: The Director shall make recommendations to the Board for:

- a. Personnel and salaries of employees;
- b. Changes in services;
- c. Contracts.

ARTICLE XI

Financial Matters

Section 1: The fiscal year of the Commission shall be the calendar year.

Section 2: An annual budget for the upcoming year shall be reviewed by the Board in August of each year. A budget shall be approved at the September board meeting and copies shall be mailed to the chief administrative officer of each Member by the Director (or Finance Manager) within two weeks of the approval. Such budget, including charges for services, shall be deemed approved by the Member unless the Member gives notice in writing that it is withdrawing from the Commission within sixty (60) days of adoption of the budget.

Section 3: The Board shall have the authority to fix cost sharing charges for all Partners in an amount sufficient to provide the funds required by the budget. The cost sharing ratio shall be fixed by the Board annually at the budget meeting. An initial capital contribution shall be made to the Commission by new Partners if they will be sharing use of assets previously purchased by other Partners. Said asset purchase rate shall be set by the Board. Any subsequent usage of assets not originally purchased may be charged to the new member at a rate to be determined by the Board.

Section 4: Billings for all charges shall be made in conjunction with the chargeback system as approved by the Board. Any Member whose charges have not been paid within sixty (60) days after the billing shall be in default and shall not be entitled to further voting privileges nor to use any of the Commission facilities and programs until such time as it is no longer in default. In the event that such charges have not been paid within sixty (60) days after such billing, such defaulting Member shall be deemed to have given notice of withdrawal from membership. In the event of a bona fide dispute between the Member and Board as to the amount which is due and payable, the Member shall nevertheless make such payment in order to preserve its status as a Member in good standing, but such payment may be made under protest and without prejudice to its right to dispute the amount of the charge and to pursue any legal remedies available.

Section 5: Excess revenues or unspent appropriations shall be considered by the Board when establishing the chargeback system.

Section 6: Insurance All equipment managed by CCITC shall be identified as owned by CCITC or a member. A report of assets shall be provided to each member annually. CCITC shall maintain insurance on all property owned by CCITC which shall include such items as PCs, laptops, monitors and furniture used by CCITC staff as well as all servers, networking equipment, electronic appliances, software and storage purchased by CCITC and used to support all Partners (also known as enterprise equipment and systems).

Each member is responsible for insuring assets purchased by the member such as Pcs, laptops, networking equipment, servers, printers, telephones, etc.

ARTICLE XII

Dissolution

Section 1: The organization shall be dissolved upon a favorable vote of three-quarters (6/8) of all Commissioners.

Section 2: In the event of dissolution the Board shall determine the measures necessary to effect the dissolution and shall provide for the taking of such measures as promptly as circumstances permit and subject to the provisions of this agreement.

Section 3: Upon dissolution, the remaining assets of the Commission, after payment of all obligations, shall be distributed among the then existing Partners in proportion to the five year average of annual operating contributions, as determined by the Board, provided that computer software prepared for such Partners shall be available to them, subject to such reasonable rules and regulations as the Board shall determine.

Section 4: If, upon dissolution, there is an organization deficit, such deficit shall be charged to and paid by the Partners on the basis of the charge back ratio average over the previous 5 years.

Section 5: In the event of dissolution, the following provisions shall govern the distribution of computer software owned by the organization:

- a) All such software shall be an asset of the organization.
- b) A Member may use (but may not authorize reuse by others) any software developed during its membership upon (1) paying any unpaid sums due, (2) paying the costs of taking such software, and (3) complying with reasonable rules and regulations of the Board relating to the taking and use of such software, such rules and regulations may include a reasonable time within which such software must be taken by any Member or former Member desiring to do so.

ARTICLE XIII

Duration

This agreement shall continue in effect indefinitely, until terminated in accordance with its terms.

ARTICLE XIV

Amendments

This agreement may be amended at any regular meeting of the Board or at any special meeting called for the purpose of amendment. Such amendment shall require the ratification of the action by the governing Board of each voting Member that is a party to this agreement.

ARTICLE XV Operating

Agreement

CCITC shall maintain an Operating Agreement that is attached as Exhibit A and hereby incorporated into this agreement [by reference]. The Operating Agreement defines details of operations. [as CCITC provides data and management information system services through its computers to its Partners].

IN WITNESS WHEREOF, the undersigned governmental units have caused this agreement to be executed on their behalf in accordance with the adopted resolutions which are attached.

Dated this 25th day of May_2021.

WITNESS:

MARATHON COUNTY:

_____ By: _____

CITY OF WAUSAU:

_____ By: _____

North Central Health Care:

_____ By: _____

SCHEDULE "A"

AMENDMENT I

At the regularly scheduled meeting held December 3, 1987 Mort McBain moved and William Boos seconded the motion to amend the CCDCC Bylaws by changing Article V, Section 2 (a) from "City of Wausau Mayor" to read "City of Wausau Mayor or Designee"; and Section 2 (c) from "Marathon County Board of Supervisors' Chairman" to read "Marathon County Board of Supervisors' Chairman or Designee". Carried.

AMENDMENT II

At the regularly scheduled meeting held May 27, 1993 Ted Tellekson moved and Carla Manthe seconded the motion to accept the resolutions of the City of Wausau common Council (5/11/93) and the Marathon County Board of Supervisors (5/25/93) to add the following to Article V, Section 2:

- e. The Marathon County Finance Director.

and delete the following from Article VIII:

Section 3: The Board shall have a Technical Advisory Committee consisting of seven (7) members. Committee members shall be appointed by the Board of Commissioners. The committee shall consist of one (1) commissioner representing Marathon County; one (1) commissioner representing the City of Wausau; four (4) citizen members; and the Director of the City-County Information Technology Commission.

The Technical Advisory Committee shall have the following duties:

- a. Assist in evaluating and/or recommending solutions to data processing proposals, problems, or requests for service.
- b. Recommend priorities.
- c. Assist in long range planning and goal setting.
- d. Exercise additional responsibilities as delegated to it by the Board of Commissioners.

The committee shall be the technical liaison, in an advisory capacity, between the

users and Board of Commissioners. All actions taken by the Technical Advisory Committee shall be advisory and subject to approval of the Board of Commissioners. Carried.

AMENDMENT III

At the regularly scheduled meeting held April 30, 1998 Cyndi Jahnke (Mayor Linda Lawrence's Designee) moved and Bryon Karow seconded the motion to amend the CCDCC Bylaws as follows:

- Article VII, Section 5 - Change the language from the presence of three (3) Commissioners shall constitute a quorum to the presence of four (4) Commissioners shall constitute a quorum

And

- Article XII, Section 1 - Change the language from three-fifths (3/5) to four-sixths (4/6) or two-thirds (2/3).

Carried.

AMENDMENT IV

At the regularly scheduled meeting held October 14, 1999 Mort McBain moved and Maryanne Groat seconded the motion to amend the CCDCC Bylaws by adding Section 6 to Article XI as follows:

- The City of Wausau agrees to provide Insurance for all CCDCC personal property located on City property, on a full replacement cost basis. The CCDCC shall provide a list of all such personal property as required by the Insurance carrier.

Carried.

AMENDMENT V

At the regularly scheduled meeting held December 20, 2001, Mort McBain moved and Maryanne Groat seconded the motion to amend the CCDCC Bylaws as follows:

- Article V, Section 2(d) - Change the language from Marathon County Administrator to read Marathon County Administrator or Deputy County Administrator.

Amendment VI 9/23/08

At the regularly scheduled meeting held June 16, 2008 Kristi Kordus moved and Mort McBain seconded the motion to revise the name from the City-County IT Group (which had been approved at the May meeting) to the City-County Information Technology Commission.

Other recommended amendments:

- change voting from 6 to 8
- change quorum from 4 to 5
- Change the budget date from July to August
- establish the chargeback ratio during each year's annual budget
- new members shall buy into capital assets if they will be sharing their use.
- change dissolution requirement to 6/8
- Change distribution of assets to average of previous 5 years of ratios of the operating budget

Amendment VII. 10/2/08

1. Introduction. The Introduction to the Joint Cooperative Agreement shall be repealed and recreated, as follows:

THIS AGREEMENT, effective March 1, 2009, is made between Marathon County, the City of Wausau, and the North Central Health Care governmental units located in the State of Wisconsin, an establishment of a commission in accordance with Wis. Stats., §66.0301 as follows:

2. Article V, Board of Commissioners, Section 2. The introduction to be amended to reflect eight (8) Commissioners instead of six (6).

3. Article V, Section 2, shall be amended to remove:

- e. Marathon County Finance Director

4. Article V, Section 2, shall be amended to include the following:

- e. North Central Health Care CEO or designee
- f. North Central Health Care Finance Director

5. Article V, Section 3, shall be amended to include:

The other two (2) Commissioners shall be citizens of Marathon County and shall be appointed by a majority vote of the other six (6) Commissioners.

6. Article VII, Section 5, shall be amended to reflect that the presence of five (5) Commissioners shall constitute a quorum.

7. Article X1, Section 2, shall be amended to reflect that the annual budget shall be adopted by the Board in August of each year. Copies of the budget shall be mailed by the first day of September.

8. Article XI, Section 3, is repealed and recreated as follows:

The Board shall have the authority to fix cost sharing charges for all Members in an amount sufficient to provide the funds required by the budget. The cost sharing ratio shall be fixed by the Board annually at the budget meeting. An initial capital contribution shall be made to the Commission by new members if they will be sharing use of assets previously purchased by other members. Said asset purchase rate shall be set by the Board. Any subsequent usage of assets not originally purchased may be charged to the new member at a rate to be determined by the Board.

9. Article XII, Section 1, shall be amended to reflect that a three quarters vote to dissolve the Commission shall be six of eight voting members.

10. Article XII, Section 3, is repealed and recreated to read:

Upon dissolution, the remaining assets of the Commission, after payment of all obligations, shall be distributed among the then existing Members in a proportion equal to the average of the five previous cost sharing ratios as established by the Board.

11. Article XI, Section 4, is repealed and recreated as:

If, upon dissolution, there is an organization deficit, such deficit shall be charged to and paid by the Members on the basis of the cost sharing ratio average over the five previous years.

12. The signature line shall be amended to include a signature by an authorized agent on behalf of North Central Health Care Facilities.

Amendment VIII 7/01/14

At the regularly scheduled meeting held July 1, 2014 Brad Karger moved and Gary Bezucha seconded the motion to amend the CCDCC Bylaws as follows:

- Article V, Section 2- Replace Marathon County Board of Supervisors' Chairman or designee with Marathon County Technology Committee Chairman.

Amendment IX 7/01/14

At the regularly scheduled meeting held July 1, 2014 Brad Karger moved and Brenda Glodowski seconded the motion to amend the CCDCC Bylaws as follows:

- Article VII, Section 5- Remove the requirement that a quorum must contain representatives of the City of Wausau and Marathon County.

Amendment X 4/02/19

At the regularly scheduled meeting held April 2, 2019 John Tubbs moved and Pat Puyleaert seconded the motion to amend the CCDCC Bylaws as follows:

- Article V, Section 2- Replace North Central Health Care Finance Director with North Central Health Care designee. The North Central Health Care CEO will be the designator.

Amendment XII 7/7/2020

At the regularly scheduled meeting held July 7, 2020 The board moved and approved multiple changes to incorporate previous amendments; updated insurance language; budget dates, etc. References to an Operating Agreement were added.

10/6/2020 - proposed new language for appointment of citizen members

12/1/2020 – language approved

Amendment 4/6/2021

Changed to one community member.

Exhibit A

City-County Information Technology Commission Operating Agreement

Last Updated 4/28/2021

As CCITC was created to provide for the implementation and operation of a cooperative data and management information systems at a reasonable cost to foster efficiency in the provision of services under the direction of the governing Board of Commissioners, this Agreement provides for the detail of those operations in the provision of those services:

CCITC serves Marathon County, the City of Wausau, and North Central Health Care (the Partners).

Mutual Hold Harmless/Indemnification

City-County IT Commission hereby agrees to release, indemnify, defend, and hold harmless Marathon County, the City of Wausau and North Central HealthCare (NCHC) , its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of the Partner's officers, officials, employees, agents or assigns.

Marathon County, the City of Wausau and North Central HealthCare hereby agrees to release, indemnify, defend, and hold harmless the City-County IT Commission, its officials, officers, employees and agents from and against all judgments, damages, penalties, losses, costs, claims, expenses, suits, demands, debts, actions and/or causes of action of any type or nature whatsoever, including actual and reasonable attorney's fees, which may be sustained or to which they may be exposed, directly or indirectly, by reason of personal injury, death, property damage, or other liability, alleged or proven, which is determined to be caused by the negligent or intentional acts or omissions of City-County IT Commission's officers, officials, employees, agents or assigns.

Immunity

Nothing contained in this agreement is intended to be a waiver or estoppel of the rights of the County, NCHC and/or City of Wausau and their insurers to assert their rights to all affirmative defenses, limitations of liability and immunities as specifically set forth in Wisconsin Statutes, including sections 893.80, 895.52 and 345.05, and related statutes.

Insurance

In addition to CCITC, each of the three partners shall carry their own individual liability insurance with a carrier of at least an AM Best A- rating, which shall include, but not be limited to a cyber security liability policy. The premiums and other costs of the individual insurance, including the cyber security liability policy, will be borne individually by each entity. Cyber security liability coverage limits should be at least \$2,000,000 in aggregate coverage. In the event of a cyber breach, each of the entities should report the event to their respective insurance provider. It is understood by the parties that every

potential breach has distinct facts with unique cause(s) and any responsibility for damages associated with a breach will be controlled by those facts and subject to the terms, conditions, exclusions, and limitations in any applicable policy of insurance.

The City of Wausau, Marathon County and North Central Health Care are additional insureds under the cyber and other professional liability policies of the City-County IT Commission for wrongful acts, as defined by CCITC's policy, committed by or on behalf of CCITC under the Operating Agreement ("Agreement"), effective on the date of this Agreement.

Sub-Contractors Insurance

CCITC will require all sub-contractors to obtain and maintain insurance coverage consistent with Marathon County's minimum insurance requirements for sub-contractors.

Health Insurance

CCITC shall provide Health Insurance to its employees. In 2020, and for previous years, the City of Wausau has included CCITC as an additional insured under the city's health and dental plans. The total cost of providing the plans has been paid for by CCITC. The employer/employee premium split shall be determined by the CCITC Board. In the event that CCITC is forced to find their own plan the premium split will be determined by its board using a cost/benefit plan analysis.

Property and Asset Coverage

The City of Wausau shall insure the area rented by CCITC, its fixtures and fittings, furniture, and the environmental systems, including the HVAC and fire alarms for the server room.

CCITC shall track, insure, and depreciate technology assets that are purchased to serve all or multiple agencies. These are "enterprise assets".

All assets purchased by CCITC but paid for fully by an agency shall be recorded on the agency's fixed asset system, insured by the agency, and depreciated according to their depreciation schedule.

HR Advising Retainer

CCITC shall contract with County Employee Resources for a fixed rate, approved by the CCITC Board, to provide the following:

- 1) Advice and policy help with HR practices
- 2) Assistance managing all types of leave issues including FMLA, PTO, Funeral, etc.
- 3) Consulting for any potential HR practice lawsuits
- 4) Recruiting, Interviewing, Onboarding, Performance Management, etc.

Legal Retainer

CCITC shall contract with County Corporation Counsel for a fixed rate, approved by the CCITC Board, for legal services including:

- 1) Contract negotiations for technology purchases
- 2) Other legal advice as needed

Risk Management retainer

CCITC shall contract with County Risk Management for a fixed rate, approved by the CCITC Board, for sharing education and consulting advice.

Data Ownership

Each agency is the owner of the data that they enter into their agency or CCITC enterprise systems. CCITC provides access to the information.

Business Associate Agreements (“BAA”) and Qualified Service Organization Agreements (“QSO”)

CCIT shall confer with legal counsel for each partner agency to determine whether BAA and/or QSO agreements between CCIT and the partner agency are necessary. To the extent that legal counsel for any partner agency determines that execution of a BAA and/or QSO is necessary in order to ensure compliance with applicable federal and state laws, CCIT shall enter into a BAA and/or QSO agreement in format provided or deemed acceptable by the partner agency. Each partner agency will have to make an independent determination of whether the information exchanged between CCIT and the partner agency is subject to applicable HIPAA and 2 CFR Part 2 regulations thus necessitating the execution of such agreements.

Criminal Justice Information Security (CJIS)

CCITC will maintain security for law enforcement data following CJIS guidelines and will coordinate CJIS audit responses relative to IT Security.

Serving Other Governmental Entities

The CCITC shall have as its primary responsibilities to serve the three partners. CCITC may provide services to other similar entities in law enforcement, local government, and community-oriented non-profits so long as these, “external entities” pay the fully loaded cost of providing the service and the services provided to the partners are not significantly impacted. In addition, there should be a public purpose served, such as allowing for a broader base for sharing of enterprise system costs. Any agreements to provide services to external entities must be approved by the CCITC Board in advance.

Finances

Each year CCITC shall review labor usage by each of the agencies and use a three-year rolling average to determine the operating cost split between the agencies.

CCITC shall establish a rate sheet for device support. The rates should reflect an internal rate for the three agencies that own CCITC as well as an external rate that reflects additional overhead costs. The goal of PC support rate is to cover the costs of the PC Technicians. PC Technician time shall not be used in determining the operating split. Other rates should reflect the costs to support the applicable service.

Capital Projects

CCITC shall work with each agency to plan capital projects. CCITC will follow the agency’s schedule for submission (typically capital project requests are done in early June for the subsequent year).

Service Level Agreement

CCITC Shall set service level goals and metrics for evaluating goal performance in a Service Level Agreement. Service level metrics shall be reported to the CCITC Board monthly. Changes to the SLA will only need to be approved by the CCITC Board.