

# Dane County Contract Cover Sheet

Res 527  
significant

<b>Dept./Division</b>	Dane County Department of Public Works
<b>Vendor Name</b>	Gilbane Building Company
<b>Vendor MUNIS #</b>	28602
<b>Brief Contract Title/Description</b>	Professional Construction Management Services for the Jail Consolidation Project at the Public Safety Building
<b>Contract Term</b>	May 22, 2018 to March 31, 2022
<b>Total Contract Amount</b>	\$ 1,363,140.00

<b>Contract #</b> <small>Admin will assign</small>	13400
<b>Addendum</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Type of Contract</b>	
<input checked="" type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Grant
<input type="checkbox"/>	County Lessee
<input type="checkbox"/>	County Lessor
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Other

<b>Purchasing Authority</b>	<input type="checkbox"/> <b>\$10,000 or under – Best Judgment</b> (1 quote required)		
	<input type="checkbox"/> <b>Between \$10,000 – \$36,000 (\$0 – \$25,000 Public Works)</b> (3 quotes required)		
	<input checked="" type="checkbox"/> <b>Over \$36,000 (\$25,000 Public Works)</b> (Formal RFB/RFP required)	<b>RFB/RFP #</b>	318001
	<input type="checkbox"/> <b>Bid Waiver – \$36,000 or under</b> (\$25,000 or under Public Works)		
	<input type="checkbox"/> <b>Bid Waiver – Over \$36,000</b> (N/A to Public Works)		
	<input type="checkbox"/> <b>N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other</b>		

MUNIS Req.	Org Code	CPSHRF	Obj Code	57683	Amount	\$ 1,363,140.00
<b>Req #</b> 1665	Org Code		Obj Code		Amount	\$
<b>Year</b> 2018	Org Code		Obj Code		Amount	\$

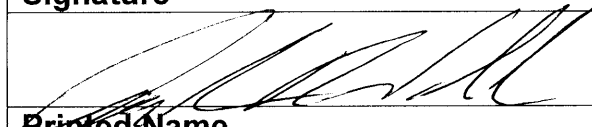
<b>Resolution</b>	<b>A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.</b>						
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.						
	<input checked="" type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.					<b>Res #</b>	527
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.					<b>Year</b>	2017

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
MG	Received by DOA	5/22/18		
AD	Controller		6/1/18	
PCP	Purchasing	5/31/18	6/1/18	12.C. removed, CB language added
VJ	Corporation Counsel	5/30/18	5/30/18	
RU	Risk Management	5/29/18	5/30/18	Non Std / as lang. (AB & FF) ok
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
<b>Name</b>	Scott Carlson	<b>Name</b>	Adam Jelen
<b>Phone #</b>	608-266-4179	<b>Phone #</b>	414-406-2365
<b>Email</b>	carlson.scott@countyofdane.com	<b>Email</b>	ajelen@gilbaneco.com
<b>Address</b>	1919 Alliant Energy Center Way Madison, WI 53713	<b>Address</b>	101 West Pleasant St., Suite 104 Milwaukee, WI 53212

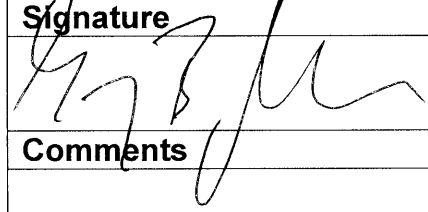
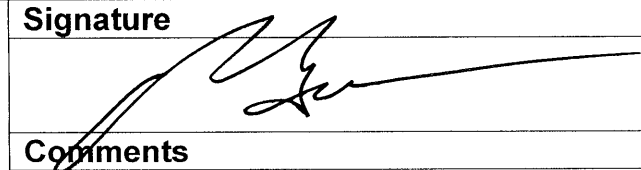
<b>Certification:</b> The attached contract is a:	
<input checked="" type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input type="checkbox"/>	Dane County Contract <u>with</u> modifications. <b>The modifications have been reviewed by:</b>
<input type="checkbox"/>	Non-standard contract.

### Contract Cover Sheet Signature

<b>Department Approval of Contract</b>		
Dept. Head / Authorized Designee	<b>Signature</b>	<b>Date</b>
		
	<b>Printed Name</b>	5/23/18
John Welch		

### Contracts Exceeding \$100,000

Major Contracts Review – DCO Sect. 25.11(3)

Director of Administration	<b>Signature</b>	<b>Date</b>
		
	<b>Comments</b>	6/1/18
Corporation Counsel	<b>Signature</b>	<b>Date</b>
		
	<b>Comments</b>	5/30/18
Subject to removal of equal benefit provision		

100

**COUNTY OF DANE**  
**CONSTRUCTION MANAGEMENT PROFESSIONAL SERVICES AGREEMENT**  
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COUNTY OF DANE

CONSTRUCTION MANAGEMENT PROFESSIONAL SERVICES AGREEMENT

SIGNATURE PAGE

Date: May 24, 2018
Project No.: 318001
Agreement No.: 13400

THIS AGREEMENT is between the County of Dane, by its Department of Public Works, hereinafter referred to as "COUNTY", and Gilbane Building Company, 101 West Pleasant St., Suite 104, Milwaukee, WI 53212, hereinafter called the "CM".

WITNESSETH

WHEREAS, COUNTY proposes securing construction management services for a project described as follows:

Jail Consolidation Project

WHEREAS, COUNTY deems it advisable to engage the services of the CM to furnish professional services in connection with this project, and

WHEREAS, COUNTY has authority to engage such services, and

NOW, THEREFORE, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the following pages, which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, COUNTY and the CM have executed this Agreement as of the above date.

GILBANE BUILDING COMPANY

COUNTY OF DANE

Signature: [Handwritten Signature] Date: 05/25/2018

Joseph T. Parisi, County Executive Date

Adam Jelen
Printed Name
Senior Vice President
Title

Scott McDonell, County Clerk Date

05-0495530
Federal Employer Identification Number (FEIN)

Adam R. Jelen
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## **1. ARTICLE 1: SCOPE OF AGREEMENT**

- 1.A. This Agreement between COUNTY and the person or firm, duly licensed under the laws and in accordance with the regulations of the State of Wisconsin, hereinafter referred to as the "CM" shall be governed by the following Terms and Conditions.
- 1.B. The CM shall provide technical and professional services under this Agreement. The Terms and Conditions of this Agreement shall apply to modifications made to this Agreement and shall apply to the services rendered in the completion of this construction project.
- 1.C. The CM shall serve as the professional technical advisor, manager and consultant to COUNTY in matters arising out of or incidental to the performance of this Agreement and in that capacity, the CM shall not have a contractual duty or responsibility to any other person or party or individual regarding the services under this Agreement, except as that duty may arise under the laws of the State of Wisconsin. The CM is not an agent of the COUNTY within the meaning of s. 893.80 or 895.46, Wis. Stats.
- 1.D. The CM as the technical / construction advisor and consultant to County shall not be eligible to bid on any contract related to this project, including but not limited to architectural / engineering design work, commissioning work, general contractor or subcontractor. This restriction shall apply to any officer, director, employee, agent or subsidiary of the CM.
- 1.E. Professional services performed or furnished under this Agreement shall be based on the care and skill ordinarily used by members of the profession involved, who practice under the authority of and who are governed by the license issued under the Wisconsin Statutes and the Wisconsin Administrative Code.
- 1.F. By accepting this Agreement, the CM represents possession of the necessary skill and other qualifications to perform work under this Agreement and is familiar with the practices in the locality where such services and work shall be performed.
- 1.G. The CM shall review and become familiar with the current Division 00 & 01 requirements utilized by COUNTY in construction contracts and shall provide services and work, consistent with such requirements, so that the Contractor's schedule is not negatively impacted.
- 1.H. Not Used.
- 1.I. Not Used.
- 1.J. The CM may substitute consultants or professional staff under this Agreement only to the specific extent authorized by COUNTY in writing.
- 1.K. In the performance of this Agreement, the CM shall become familiar with and perform such services in accordance with the specifications set forth in the Request for Proposals document. The COUNTY reserves the right to update County Master Specifications Division 00 and Division 01 at any time, including after the signing date of this Agreement. The CM shall use and conform to the most current County Master Specifications Division 00 and Division 01 available at the time of Final Review Documents and the CM shall not be eligible for a change order based upon alterations to said County Master Specifications Division 00 and Division 01 occurring after the date of Agreement signing.

1.L. For this project the following terms will be in use:

1.L.1) Project Planning Team = Dane County staff from the Dane County Sheriff's Office, Public Works Engineering Division, Administration, County Executive's Office, the architect / engineering design team (A/E), a commissioning agent & the CM. Occasionally, others may be asked to join or provide input to this team.

1.L.2) Project Committee = a group of individuals selected by the Chair of the Public Protection & Judiciary Committee & the Sheriff. The CM shall be present & provide input for the meetings of this group.

## **2. ARTICLE 2: SCOPE OF THE SERVICES TO BE PROVIDED**

2.A. General:

2.A.1) Services are to be provided by the CM in each of the following phases:

Pre-Design Phase  
Schematic Design Phase  
Design Development Phase  
Construction Documents Phase  
Bidding Phase  
Construction Phase - Administration of the Construction Contract  
Commissioning Phase

2.A.2) The "General Tasks" described after Phase VII (Commissioning), and any additional services that may be authorized pursuant to Article 4.D., and shall be performed by the CM as principal.

2.A.3) An assigned COUNTY Public Works Project Manager will be the CM's contact in securing COUNTY direction and for arranging the necessary meetings with COUNTY or other County Departments and obtaining the approvals required by COUNTY.

2.A.4) The CM shall create a log of all COUNTY, A/E and CM generated changes resulting from meetings and communications from COUNTY. This log shall be kept throughout the entire design process and submitted to COUNTY every two (2) months.

2.A.5) The term "written" or "in writing" may be either electronic or hard copy documentation, unless otherwise stated or directed by COUNTY.

2.B. Phase I - Pre-Design:

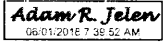
2.B.1) The CM shall obtain from COUNTY information and materials necessary to ascertain scope of the Project and shall verify with COUNTY program and functional requirements of the Project.

2.B.2) Review all pre-design information provided by the COUNTY, Dane County Sheriff's Office (DCSO) and A/E.

2.B.3) Meet and confer at review meetings with representatives of the COUNTY and A/E during preparation of proposed programming & space use planning.

2.B.3) a. Anticipate up to two (2) Project Planning Team meetings during this Phase. These meetings may be up to four (4) hours long.

2.B.4) Not Used.

2.B.5) Review & evaluate the cost model budget presented in the Option 3 Final Report & compare to historical benchmark data of similar projects. This will be an independent cost estimate. This will establish budgets for each building system for targeting and guiding Schematic Design. GJM 5/31/19 

2.B.6) The A/E will develop total project budget based on cost model budget for construction costs and allowances for all indirect costs to the project based on input from the COUNTY and other Project Planning Team members. The Total Project Budget Summary will be reviewed regularly with the Owner and updated with each subsequent cost estimate and any changes to indirect costs/budgets.

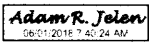
2.B.7) Develop a summary level project schedule for all aspects of the project beginning in Pre-Design through completion of construction. The project schedule shall specify all major milestones required to continue the project progress to assure successful and timely completion. The project schedule will be distributed and followed by all Project Planning Team members.

2.B.8) Not Used.

2.B.9) Not Used.

2.C. Phase II - Schematic Design:

2.C.1) Review all design information provided by the COUNTY, DCSO & A/E.

2.C.2) Review, cross-check values, critique & provide feedback on the detailed Schematic Design cost estimate developed by the A/E for the project, based on the Schematic Design documents issued by the A/E. This will be an independent cost estimate. This analysis will be reviewed by the COUNTY, DCSO & A/E in detail and shall be reflected in the updated Total Project Budget Summary. GJM 5/31/19 

2.C.3) Develop & maintain a Log of Value Engineering Options that can advise the COUNTY, DCSO & A/E of various design and construction alternates. These alternates shall address and consider costs related to efficiency, life cycle costs of equipment & systems, maintenance, energy, and operation. The Log of Value Engineering Options may be used during the duration of design until the completion of the Construction Documents.

2.C.4) Update the schedule for the project indicating the expected progress of the work for the project.

2.C.5) Meet and confer with COUNTY, DCSO, A/E and others as necessary to ensure that all design approvals and other schedule completion aspects of the schematic design phase proceed according to the project schedule. The COUNTY & DCSO will make final design approvals.

2.C.6) Attend & participate in up to four (4) Project Planning Team meetings (every other week) during this Phase and provide input and feedback on design, cost and schedule issues. These meetings may be up to four (4) hours long.

- 2.C.7) Attend up to three (3) Project Committee meetings during this Phase & answer questions & provide feedback on the project. These meetings may be up to two (2) hours long.

2.D. Phase III - Design Development:

- 2.D.1) Review all design information provided by the COUNTY, DCSO & A/E.
- 2.D.2) Meet with the COUNTY, DCSO & A/E to review selection of mechanical, electrical & piping systems and components. The A/E and COUNTY will make selection of systems and components.
- 2.D.3) The major design features and systems that must be considered include, but are not limited to:

Site & civil related work (e.g., utilities, stormwater management, erosion control)

Structural systems

Building envelope (wall, window and roofing) systems

Building configuration

Life safety systems

Heating, ventilating and air conditioning & associated controls

Plumbing & associated controls

Electrical & associated controls

Lighting systems & associated controls

Telecom systems

Audio / visual systems

Detention facility security systems & associated controls:

- Doors, locks, & hardware
- Surveillance, cameras, recording devices

Facility signage

- 2.D.4) Review, cross-check values, critique & provide feedback on the detailed Design Development cost estimate developed by the A/E for the project, based on the Design Development documents issued by the A/E. This will be an independent cost estimate. This analysis will be reviewed by the COUNTY, DCSO & A/E in detail and shall be reflected in the updated Total Project Budget Summary. *GJM*

5/31/19

**Adam R. Jelen**

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- 2.D.5) Update the schedule for the project indicating the expected progress of the work for the project.
- 2.D.6) Update the Log of Value Engineering Options to reflect any changes to the cost of various design and construction alternates. These alternates shall address and consider costs related to efficiency, life cycle costs of equipment & systems, maintenance, energy, and operation. The Log of Value Engineering Options may be used during the duration of design until the completion of the Construction Documents.
- 2.D.7) Perform a thorough document review & confirm that systems are completely defined as required for the DCSO's operations and future maintenance. Notify the COUNTY & A/E of any gaps within the design documents for resolution during the construction documentation. This review shall also confirm the A/E's design concept and such other matters as are necessary to establish that at this preliminary point, the proposed design concept is consistent with the



requirements of COUNTY. The CM does not assume responsibility for the A/E's design.

2.D.7) a. Analyze the biddability and constructability of the project within the time allowed by COUNTY

2.D.7) b. Identify & report on any part of the work that might require special monitoring or consideration during construction to prevent quality control problems, delays, or cost escalation. Include any long lead time equipment or materials, items which interface with difficulty, areas of work requiring significant care, sequencing or precision in installation and full or partial User occupancy during construction.

2.D.7) c. As a safeguard against unforeseen bidding conditions, the CM may recommend appropriate alternate bids for COUNTY's consideration.

2.D.8) The CM shall give attention during design meetings & document reviews to the following factors, including, but not limited to:

- Program clarification
- Scheduling concerns
- Existing site conditions
- Project cost estimates
- Cost-value trade offs
- Quality requirements
- Special material requirements
- Communications requirements
- Engineering requirements

2.D.9) Attend & participate in up to six (6) Project Planning Team meetings (every three (3) weeks) during this Phase and provide input and feedback on the project. These meetings may be up to four (4) hours long.

2.D.10) Attend up to two (2) Project Committee meetings during this Phase & answer questions & provide feedback on the project. These meetings may be up to two (2) hours long.

2.E. Phase IV - Construction Documents:

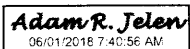

2.E.1) Respond to inquiries from the A/E as the A/E prepares Construction Documents for the project.

2.E.2) Attend & participate in up to five (5) Project Planning Team meetings (every other week) and provide input and feedback on the project. These meetings may be up to four (4) hours long.

2.E.3) Review all design information provided by the COUNTY, DCSO & A/E.

2.E.4) Review the draft & final construction documents issued by the A/E. Expect Construction Documents reviews at 60%, 95% & Final.

2.E.4) a. The goal is to develop a biddable and constructible project, compliant with all applicable building and safety codes.

- 2.E.4) b. This review is intended to check the progress of the documents and project scope to assure that the Design Development cost estimate remains current
- 2.E.4) c. Identify any shifts / changes to the documents and develop associated costs of significant new / revised elements for review with the COUNTY, DCSO & A/E.
- 2.E.5) Update the schedule for the project indicating the expected progress of the work for the project.
- 2.E.6) Review and update the Log of Value Engineering Options to reflect any changes to the cost of various design and construction alternates. Confirm list of alternates that will be incorporated into the Construction Documents as alternate bids with the COUNTY, DCSO & A/E.
- 2.E.7) The CM shall compile and include in the Construction Documents a summary listing of all submittals required for the project from the construction contractor(s). Included shall be shop drawings, samples, cuts, catalogs, models, mockups and other preliminary information needed from the contractors to describe how they will fulfill their responsibilities under their contracts.
- 2.E.8) The CM shall work with the COUNTY & DCSO to issue a list of recommended changes / corrections to be incorporated in the final documents. The A/E shall within seven (7) calendar days transmit written replies from the A/E and its sub-consultants to review comments issued by COUNTY or for which clarification requests were identified or for which changes were authorized at the final design review meeting and communicated to the A/E. Directions by COUNTY shall be incorporated into the documents.
- 2.E.9) The CM shall assist the COUNTY in preparation and assembly of the final specifications. The CM shall develop detailed scope of work documentation for each specification section to assure that all general conditions and work coordination items are included in the Construction Documents. The CM shall also provide the COUNTY with specifications to request contractors bidding on the project to provide a quality management plan for the project.
- 2.E.10) Review all COUNTY contractual language to assure that all cost and schedule items are addressed appropriately and incorporated in the Construction Documents. 
- 2.E.11) Prior to submission of the final documents, the A/E shall call for a final review meeting with COUNTY, DCSO & CM, if needed, to finalize and prepare for publication of the final Construction Documents, with any conditions required by COUNTY.
- 2.E.12) Review, cross-check values, critique & provide feedback on the detailed Construction Documents cost estimate developed by the A/E for the project, based on the Construction Documents issued by the A/E. This will be an independent cost estimate. This analysis will be reviewed by the COUNTY, DCSO & A/E in detail and shall be reflected in the updated Total Project Budget Summary. *GJM 5/31/19* 

2.F. Phase V - Bidding:

- 2.F.1) The Bidding Phase shall commence with the publication of the Invitation to Bid and shall conclude with the award of the number of contracts necessary to achieve the purposes of construction.
- 2.F.2) The CM shall serve as the professional technical consultant and advisor to COUNTY during the bidding process, including the preparation for and participation in Pre-Bid Conferences.
- 2.F.3) The CM shall review all pre-bid questions from contractors & answers from the COUNTY & A/E. The COUNTY & A/E shall prepare any addenda necessary & distribute as appropriate.
- 2.F.4) The CM shall assist COUNTY by evaluating and making recommendations to COUNTY on the qualifications of prospective construction contractors and subcontractors.
- 2.F.5) The CM shall assist COUNTY in analyzing bids and negotiating with the lowest, qualified, responsible bidders as deemed appropriate by COUNTY.
- 2.F.6) In the event that there is a reduction in scope to keep the project within budget and this results in low bid(s) which total less than the construction budget, then the CM shall review, analyze & report on A/E's construction bulletin(s) to add deleted program work back into the project.
- 2.F.7) Attend & participate in up to two (2) project meetings during this Phase (including the pre-bid meeting) and provide input and feedback on the project. These meetings may be up to four (4) hours long.

2.G. Phase VI - Construction - Administration of the Construction Contract:

- 2.G.1) The Construction Phase will commence with the award of the Public Works Construction Contract and will terminate when the COUNTY accepts the construction.
- 2.G.2) The CM, as the representative of the COUNTY during the Construction Phase, shall advise and consult with the CONTRACTOR. The CM shall have the authority to act on behalf of the COUNTY to the extent provided in the COUNTY's Construction Documents.
- 2.G.3) The CM shall at all times have site access to the Work.
- 2.G.4) The CM shall attend construction meetings. Such meetings shall be held at regular two (2) week intervals plus additional meetings as may be required to maintain progress of the Work. The CM shall make periodic visits to the site as necessary to maintain familiarity with the progress and quality of the work and to determine in general if the Work is proceeding in accordance with the Construction Documents.
  - 2.G.4) a. The CM is expected to be on-site 16 hours per week during the first quarter (13 weeks) of the project.
  - 2.G.4) b. The CM is expected to be on-site 32 hours per week during the second quarter (13 weeks) of the project.

- 2.G.4) c. The CM is expected to be on-site full time during the third through the eighth quarters of the project.
- 2.G.5) The CM shall be available as needed to report to the Project Planning Team on claims of the COUNTY, A/E or CONTRACTOR relating to change orders and the execution and progress of the work and on all other matters or questions related thereto. The CM in coordination with the A/E shall review all change order requests to verify scope and validity.
- 2.G.6) The CM shall provide the COUNTY (prior to the Bidding Phase) with specifications for the COUNTY to request a quality management plan for the Work as part of the CONTRACTOR's work. If the COUNTY chooses to require the CONTRACTOR to provide and utilize a quality management plan for the Project, the CM shall monitor the CONTRACTOR's implementation of the quality management plan for the Work.
- 2.G.7) The CM shall have authority to reject work that does not conform to the project's Construction Documents. Whenever, in the CM's reasonable opinion, it is considered necessary or advisable to insure the proper implementation of the intent of the Construction Documents, with the approval of the COUNTY's Project Manager, the CM will have authority to require special inspection or testing of any work in accordance with the provisions of the construction documents whether or not such work be then fabricated, installed or completed. The cost of such special inspection or testing shall not be borne by the CM.
- 2.G.8) The CM shall receive a copy of all CONTRACTOR's submittals such as shop drawings, product data, and samples and identify issues and make recommendations regarding such to the COUNTY's Project Manager.
- 2.G.9) The CM shall receive a copy of all supplemental drawings, specifications, and interpretations, prepared by the A/E, in response to requests for information and clarification by CONTRACTOR. The CM shall review this documentation and provide feedback when issues are identified.
- 2.G.10) The CM shall receive a copy of reports prepared by the Commissioning Agent. The CM shall review this documentation and provide feedback when issues are identified, and assist in determining the appropriate course of action to assure that all deficiencies are resolved appropriately and that the contractual obligations of the CONTRACTOR are upheld.
- 2.G.11) The CM shall track all costs (both construction and indirect costs) as they are incurred during the project and review the Total Project Budget Summary with the COUNTY on a regular basis to assure that the project is remaining on budget and alert the COUNTY to any instances when there are issues with the budget.
- 2.G.12) The CM shall continue to track and update the summary level project schedule throughout construction to assure that project completion is achieved in a timely manner and with the expectations of the COUNTY.
- 2.G.13) The CM, in coordination with the A/E and Commissioning Agent, shall conduct construction observations to determine the dates of substantial completion / occupancy and final completion, substantiated by punch lists, shall receive and review written guarantees and related documents assembled by the CONTRACTOR.

- 2.G.14) The CM shall coordinate with the A/E and Commissioning Agent to review and approve for reasonable accuracy and completeness, the CONTRACTOR's submission of "as-built" drawings and operations and maintenance manuals and transmit same to the COUNTY prior to certification of the CONTRACTOR's application for final payment.
- 2.G.15) CM shall review all periodic Certificates of Payment submitted by the CONTRACTOR and then submit each Certificate to the COUNTY's Project Manager with a recommendation to make payment or not make payment.
- 2.G.16) The CM's recommendation that the COUNTY make payment on a Certificate of Payment shall not be a representation that the CM has:
- 2.G.16) a. Made exhaustive or continuous on-site inspections to check the quality or quantity of construction;
  - 2.G.16) b. Reviewed construction means, methods, techniques, sequences for the CONTRACTOR's own work, or procedures;
  - 2.G.16) c. Reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the COUNTY to substantiate the CONTRACTOR's right to payment; or
  - 2.G.16) d. Ascertained how or for what purpose the CONTRACTOR has used money previously paid on account of the CONTRACTOR's Contract Sum.
- 2.G.17) The CM shall review the safety programs developed by the CONTRACTOR solely for the purpose of comparing the safety programs with those of the subcontractors and advising the COUNTY of any construction safety concerns. The CM's responsibilities for reviewing these safety programs shall not extend to direct control over or charge of the acts or omissions of the CONTRACTOR, subcontractors, agents or employees of the CONTRACTOR or subcontractors, or any other persons performing portions of the Work and not directly employed by the CM.
- 2.G.18) With respect to the CONTRACTOR's own work, the CM shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the CONTRACTOR or its subcontractors, since these are solely the CONTRACTOR's responsibility under the Public Works Construction Contract. The CM shall not be responsible for the CONTRACTOR's failure to carry out construction in accordance with the respective construction documents, except when acting as the COUNTY's representative under Article 2.G., Paragraphs 2, 4, 7 & 10 and any other provision of this Professional Services Agreement where the CM is performing tasks on behalf of the COUNTY and such tasks have a direct effect on the CONTRACTOR's work. The CM shall not have control over or charge of acts or omissions of the CONTRACTOR, its subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the CM.
- 2.G.19) The CM will be responsible for arranging and conducting construction-related meetings as required and act as the point of contact for the construction

contractors. The CM shall attend, take notes, publish and distribute minutes of job meetings after COUNTY approval.

2.G.19) a. Following construction site visits, the CM shall make routine, written status reports detailing observations and activities on the project, at such intervals as is elsewhere herein established and in a format approved by COUNTY. The CM shall submit the reports within three (3) business days of the site visit by the CM's representative.

2.G.19) b. Should the CM become aware that the work of any contractor or subcontractor in place or underway does not conform to the work or quality required by the Construction Documents, the COUNTY Project Manager & A/E shall be immediately notified in writing. It is appropriate for the CM to also immediately advise the contractors of substantial deficiencies, and that notification of these deficiencies will be made to COUNTY & A/E. The CM shall furnish such data as necessary to inform COUNTY & A/E of the degree of the noncompliance with the Construction Documents, the cause thereof, the impact on schedule and cost, if known, and a recommended course of conduct. COUNTY shall be solely responsible for implementation of the CM's recommendation. This assumption of responsibility by COUNTY shall not relieve the CM or its consultants for negligence in the discovery of the condition, which was or should have been discovered.

## 2.H. Phase VII - Commissioning

2.H.1) The CM shall work with the Commissioning Agent (CA) through the design, construction & start-up phases.

2.H.2) The building elements, equipment & systems shall be complete and operating. System start-up, testing, balancing and satisfactory system performance is the responsibility of the General Contractor. This includes all calibration and adjustment of all system controls, balancing of loads, troubleshooting and verification of software and final adjustments that may be needed.

2.H.3) All operating conditions and control sequences shall be tested, adjusted & signed off as complete by the CA, CM, A/E & COUNTY during the start-up period.

## 2.I. General Tasks:

2.I.1) All tasks outlined in Phases I through VII above shall include the following:

2.I.1) a. Review design documents during their development and advise the COUNTY & A/E on proposed site use and building improvements including selection of materials and building systems and equipment. This review shall focus on insuring clarity, consistency, and constructability and compliance with the objectives of the project. The CM's action in reviewing the design documents and in making recommendations to the COUNTY & A/E under this paragraph is advisory only, and any such advice or recommendations must be weighed and ultimately approved by the A/E of record.

2.I.1) b. Provide recommendations on constructability, availability of materials and labor, sequencing for phased construction, time requirements for

procurement, installation and construction, and factors related to construction costs. Include costs of alternate designs or materials, preliminary budgets, life cycle data, and potential construction cost reductions.

- 2.I.1) c. Provide recommendations and information to the COUNTY regarding the assignment of responsibilities for temporary construction facilities and equipment, materials and services for common use of CONTRACTOR. Verify that such requirements and assignment of responsibilities are included in the Construction Documents.
- 2.I.1) d. Not Used.
- 2.I.1) e. Assist the COUNTY in selecting, retaining, and coordinating the professional services of surveyors, special consultants, and testing laboratory services as required for the project.
- 2.I.1) f. Meet and confer with the Project Planning Team on a periodic basis to provide project updates.

### **3. ARTICLE 3: COUNTY'S RESPONSIBILITIES**

- 3.A. COUNTY will determine the project scope for which the professional design services are required and will fully cooperate in achieving completion of that work.
- 3.B. COUNTY will establish an internal operating procedure for timely and proper performance of any COUNTY duty required to fulfill the needs of the project.
- 3.C. COUNTY will provide available information regarding the requirements for the project, which set forth COUNTY's objectives for program, schedule and overall budget. COUNTY will make available to the CM data known to COUNTY or requested by the CM, which may be needed for the fulfillment of the professional responsibility of the CM. This data may include, but is not limited to, prints of existing buildings or record drawings and COUNTY standards and guides. Such documents will be the most recent and accurate available. The use of any such data by the CM shall be without contractual or legal significance unless otherwise established elsewhere in this Agreement.
- 3.D. NOT USED.
- 3.E. COUNTY will examine documents submitted by the CM and will render decisions regarding them promptly, to avoid unreasonable delay in the progress and sequence of the CM's work.
- 3.F. COUNTY will distribute Construction Documents and any necessary addenda to prospective bidders, and conduct the bid opening for the project.
- 3.G. COUNTY will prepare and process the Agreements between COUNTY & CM, COUNTY & A/E, and between COUNTY & CONTRACTOR.
- 3.H. Unless otherwise specified in this Agreement, COUNTY will arrange for services of a testing laboratory to furnish structural, chemical, mechanical and other laboratory tests, inspections and reports as required by law or deemed necessary by COUNTY.

#### 4. ARTICLE 4: COMPENSATION

4.A. CM fees for basic services will be compensated by COUNTY in accordance with the Terms and Conditions of this Agreement as follows:

4.A.1) COUNTY will pay the CM a total lump sum fee of \$1,363,140.00 upon completion of all seven project Phases.

4.A.1) a. The CM fee for professional services shall be in accordance with the terms of this Agreement and based on the scope of services contained in the Request for Proposals, dated January 16, 2018, including any subsequent Addenda.

4.A.1) b. The CM is authorized to proceed through completion of Phase III - Design Development. The CM Fee is limited to \$409,000.00, until written instructions to proceed are provided by COUNTY to proceed through completion of Phase VII - Commissioning.

4.A.1) c. The estimated construction budget for this project is \$50,190,000. This amount excludes all estimating, construction & inflation cost contingencies and unless stated otherwise in this Agreement, hazardous materials abatement or remediation.

4.A.2) No change in fee shall result from change orders to construction contracts unless such change is described as an Additional Service under Article 4.D. of this Agreement and approved by COUNTY.

4.A.3) In the event the lowest acceptable construction bids exceed the construction budget, COUNTY will do one or more of the following:

4.A.3) a. Cooperate in revising the project scope and quality as required to reduce the project cost;

4.A.3) b. Authorize the rebidding of the project within a reasonable time; and / or

4.A.3) c. Give written approval of an increase in such construction budget.

4.A.4) In the case of 4.A.3.a. above, the A/E shall revise the drawings and specifications as necessary to bring the construction cost within the construction budget.

4.A.5) In the case of 4.A.3.a. or 4.A.3.b. above, no additional fees will be allowed for rebidding or for an increase in allocated funds.

4.B. Additional or fewer meetings may be required as the project progresses. Meetings will be billed at fixed rates & added or deducted from the Lump Sum Fee. The CM's Compensation for Additional Services, as described in Article 4.D., will be computed as follows:



4.B.1) Principals' time at a fixed rate of \$270.00 per hour, unless separate amounts are provided for each Principal. For the purposes of this Agreement, the Principals are:

Erik Lindstrom

Adam Jelen

Jon Scholz

4.B.2) Other construction management staff shall be billed at these fixed rates:

Senior construction manager or estimator: \$180.00 per hour

Project engineer: \$117.00 per hour

Accountant: \$120.00 per hour

4.B.3) Employee's time shall be computed using the employee's basic hourly salary and include overhead costs for clerical support and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits for persons in consultation, research and design in producing drawings, specifications and other documents pertaining to the project and for services during construction at the site.

4.C. Reimbursable Expenses:

4.C.1) No Reimbursable Expenses will be allowed on this project. Any expenses associated with this project shall be included as part of the Lump Sum fee.

4.D. Additional Services:

4.D.1) The following services are in addition to but are not covered in Article 4.A. These services may be identified as part of the CM's fee proposal and included with the lump sum fee as such. Compensation for these additional services or other services must be requested by the CM, and subsequently approved by COUNTY PRIOR to proceeding with the work. If the additional services are requested after the Agreement has been issued, such authorization shall be based on a written proposal delineating the nature of the services, the time involved, the estimated cost thereof, the effect on the project schedule and the individuals or firms involved. When authorized, an Agreement Change Order will be used to modify the CM's Agreement.

4.D.1) a. Reviewing previously approved drawings, specifications or other documents after written approval of Design Development Phase, to accomplish changes not initiated by the A/E other than record documents and revisions normally to be expected or required to correct deficiencies in the approved drawings and specifications.

4.D.1) b. Providing services as expert witness in connection with any public hearings, arbitration proceeding, or the proceedings of a court of record except when the CM is party thereto.

4.D.1) c. Providing historical preservation research or documentation.

- 4.D.1) d. Providing specialized design services, including, but not limited to Sustainability design or LEED certification, vibration, wind or acoustical analysis, energy modeling.
- 4.D.1) e. Participation in post-project evaluations.
- 4.D.1) f. Preparing multiple bid packages.

4.E. Payments to the CM:

4.E.1) Payments of the CM's lump sum fee will be made monthly, in proportion to services performed as confirmed by COUNTY, to increase the compensation to the following percentages of the lump sum fee at the completion of each phase of the work.

Phase I. Pre-Design	5%
Phase II. Schematic Design	15%
Phase III. Design Development	25%
Phase IV. Construction Documents	40%
Phase V. Bidding	45%
Phase VI. Construction	95%
Phase VII. Commissioning	100%

- 4.E.2) No more than ninety-five percent (95%) of the CM's fee shall be paid out prior to substantial completion / occupancy of the project. When COUNTY confirms that development of punch lists, review of Operating & Maintenance Manuals, submittal of record documents, has been satisfactorily completed by the CM, COUNTY will determine how and when the remaining lump sum fee is disbursed.
- 4.E.3) Payments for COUNTY-approved Reimbursable Expenses as defined in Article 4.C. and Additional Services of the CM as defined in Article 4.D., will be made monthly upon request.
- 4.E.4) A CM whose work is found deficient or fails to conform to the requirements set forth in the Agreement, is not entitled to further payments, until corrected to the satisfaction of COUNTY.
  - 4.E.4) a. Payments to the CM may be withheld for damages sustained by COUNTY due to error, omission, unauthorized changes or negligence on the part of the CM. COUNTY will notify the CM in writing of the alleged, specific damages and amounts involved within 60 days of COUNTY recognizing such error, omission, or negligence.
- 4.E.5) Payments to the CM will not be withheld due to disputes between CONTRACTOR and COUNTY. Payments will be made to the CM within 45 days once the dispute has been resolved.
- 4.E.6) If the project is suspended for more than three (3) months in whole or in part, the CM will be paid fees for services performed prior to receipt of written notice from COUNTY of the suspension, together with Reimbursable Expenses then due and reasonable expenses resulting from this suspension, as approved by COUNTY. If the project is resumed after being suspended for more than three (3) months, the CM's compensation will be subject to renegotiation.

**5. ARTICLE 5: ACCOUNTING RECORDS**

- 5.A. Records of the CM's direct personnel, consultants, and reimbursable expenses pertaining to the project shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and shall be available to COUNTY or an authorized representative throughout the term of this Agreement and for at least three (3) years after final payment to the CM. Fixed rates and lump sum amounts will not be subject to audit.

**6. ARTICLE 6: TERMINATION OF AGREEMENT**

- 6.A. This Agreement may be terminated by COUNTY without cause upon ten (10) calendar days written notice to the CM. In the event of termination, the CM will be paid fees for services performed to termination date, reimbursable expenses then due, and termination expenses as approved by COUNTY. Work performed prior to the date of termination shall be in accordance with the terms and conditions of this Agreement. Upon termination, the results of such work shall immediately be turned over to the COUNTY Project Manager and is a condition precedent to further payment by COUNTY.
- 6.B. The CM has the right to terminate this Agreement if COUNTY fails to make payments within 90 days of invoice & resolution of any disputes if applicable.

**7. ARTICLE 7: OWNERSHIP OF DOCUMENTS**

- 7.A. All approved copies of shop drawings and other such documents prepared by the CM or any consultant pursuant to this Agreement shall become the property of COUNTY on completion and acceptance of any of the CM's work, or upon termination of the Agreement, and shall be delivered to COUNTY upon request.
- 7.B. Documents prepared under this Agreement may be used by COUNTY for informational purposes without additional compensation to the CM.
- 7.C. NOT USED.

**8. ARTICLE 8: LIABILITY - HOLD HARMLESS, INDEMNIFICATION AND CLAIMS FOR CONSEQUENTIAL DAMAGES**

- 8.A. CM shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of CM furnishing the services required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused or resulting from the acts or omissions of either COUNTY, its agencies, boards, commissions, officers, employees or representatives or the A/E professionals assigned to this project. The obligations of CM under this paragraph shall survive the expiration or termination of this Agreement.
- 8.B. Claims for Consequential Damages:
- 8.B.1) The CM and COUNTY waive Claims against each other for the consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

- 8.B.1) a. Damages incurred by the COUNTY for rental expenses, losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or the services of such persons; and
- 8.B.1) b. Damages incurred by the CM for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising from the Work. Notwithstanding the foregoing, the CM shall be entitled to an equitable adjustment in its fee and general conditions in the event of delays beyond its control.

**9. ARTICLE 9: PROFESSIONAL LIABILITY INSURANCE**

9.A. The CM and its consultants retained under the terms of this Agreement shall procure and maintain a professional liability insurance policy with at least \$1,000,000 in coverage that provides for payment of the insured's liability for errors, omissions or negligent acts arising out of the performance of the professional services required under this Agreement. The CM shall provide up-to-date, accurate professional liability information on the CM's Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Upon request by COUNTY, the CM shall furnish COUNTY with a Certificate of Insurance showing the type, amount, deductible, effective date and date of expiration of such policy. Such certificate shall also contain substantially the following statement: "The insurance covered by this certificate shall not be canceled, the coverage changed or reduced by endorsement, by the insurance company, except after thirty (30) calendar days written notice has been received by COUNTY." The CM shall not cancel or materially alter this coverage without prior written approval by COUNTY. The CM shall be responsible for consultants maintaining professional liability insurance during the life of their Agreement.

**10. ARTICLE 10: OTHER INSURANCE**

10.A. The CM and its consultants retained under terms of this Agreement shall:

10.A.1) Maintain Worker's Compensation Insurance:

10.A.1) a. Procure and maintain Worker's Compensation Insurance as required by State of Wisconsin Statutes for all of the CM's and consultant's employees engaged in work associated with the project under this Agreement.

10.A.1) b. Maintain Employer's Liability Insurance with a policy limit of not less than 1,000,000 per occurrence and \$2,000,000 in the aggregate.

10.A.2) Procure and maintain during the life of this Agreement, and until one year after the completion of this Agreement, Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence, \$1,000,000 general aggregate, combined single limit for bodily injury, personal injury, and property damage. Such coverage shall be of the "occurrence" type form and shall include the employees of the CM as insureds.

10.A.3) Procure and maintain Commercial Automobile Liability Insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Agreement.

Minimum coverage shall be \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

10.A.4) Provide an insurance certificate indicating the above Commercial Liability Insurance and property damage coverage, countersigned by an insurer licensed to do business in Wisconsin, covering and maintained for the period of the Agreement. Upon request by COUNTY, the insurance certificate is to be presented on or before execution of the Agreement.

## **11. ARTICLE 11: MISCELLANEOUS PROVISIONS**

- 11.A. CM warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so.
- 11.B. Legal Relations. The CM shall comply with and observe federal and state laws and regulations and local zoning ordinances applicable to this project and in effect on the date of this Agreement.
- 11.C. Approvals or Inspections. None of the approvals or inspections performed by COUNTY shall be construed or implied to relieve the CM from any duty or responsibility it has for its professional performance, unless COUNTY formally assumes such responsibility in writing from COUNTY so stating that the responsibility has been assumed.
- 11.D. Successors, Subrogees and Assigns. COUNTY and CM each bind themselves, their partners, successors, subrogees, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, subrogees, assigns and legal representatives of such other party with respect to covenants of this Agreement.
- 11.E. Claims. The CM's project manager will meet with COUNTY's Project Manager to attempt to resolve claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof. Issues not settled are to be presented in writing to the COUNTY Assistant Public Works Director for review and resolution. The decision of the Assistant Public Works Director shall be final. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane County, Wisconsin.
- 11.F. Amendment of Agreement. This Agreement may be amended in writing by both COUNTY and CM.
- 11.G. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.
- 11.H. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 11.I. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

## 12. ARTICLE 12: NONDISCRIMINATION IN EMPLOYMENT

12.A. During the term of this Agreement, CM agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). CM agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases and exceptions shall be permitted only to the extent allowable in state or federal law.

### 12.B. Civil Rights Compliance:

12.B.1) If CM has twenty (20) or more employees and receives \$20,000 in annual contracts with COUNTY, the CM shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. CM shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of Chapter 19 of the Dane County Code of Ordinances. CM shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous calendar year, a plan update is acceptable. The plan may cover a two-year period. If CM has less than twenty (20) employees, but receives more than \$20,000 from the COUNTY in annual contracts, it may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring efforts set forth herein below. If CM submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of CM's Plan is sufficient.

12.B.2) CM agrees to comply with the COUNTY's civil rights compliance policies and procedures. CM agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the CM. CM agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. CM further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.

12.B.3) CM shall post the Equal Opportunity Policy, the name of CM's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for

employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. CM shall supply to COUNTY's Contract Compliance Officer upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.

12.B.4) CM shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Officer when such announcements are issued.

12.C. ~~Not Used. Domestic Partner Equal Benefits: GJM 5/31/19~~

*Adam R. Jelen*  
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~~12.C.1) Not Used. CM agrees to provide the same economic benefits to all of its employees with domestic partners as it does to employees with spouses or the cash equivalent if such a benefit cannot reasonably be provided. The CM agrees to make available for County inspection the CM's payroll records relating to employees providing services on or under this Agreement or subcontract. If any payroll records of CM contain any false, misleading or fraudulent information, or if a CM fails to comply with the provisions of s. 25.13, D. C. Ordinances, the Contract Compliance Officer may withhold payments on the Agreement; terminate, cancel or suspend the Agreement in whole or in part; or, after a due process hearing, deny the contractor the right to participate in bidding on future County contracts for a period of one (1) year after the first violation is found and for a period of three (3) years after a second or subsequent violation is found.~~

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