REQUEST FOR PROPOSALS (RFP)
Minnesota Department of Transportation (MnDOT)
Vacuum Grouting of Post Tensioned Bridges

Note: This document is available in alternative formats for persons with disabilities by calling Ashley Duran, at 651-366-4627 or for persons who are hearing or speech impaired by calling the Minnesota Relay Service at 1-800-627-3529.

This RFP does not obligate MnDOT to award a Contract or complete the project, and MnDOT reserves the right to cancel the solicitation if it is considered to be in its best interest.

Project Specific Information

Project Overview:
The research project “Development of Best Practices for Inspection of Post Tensioned Bridges in Minnesota,” completed in 2012, identified Post Tensioned (PT) bridges that have higher risks for voids in grout around the PT tendon cables in the PT ducts. Voids occurred due to bleed water in the cement/water grouts, as well as inadequate grouting practices built prior to 2003. Investigative tests were performed on selected locations on three bridges as part of the research project, and grout voids were found in multiple ducts on one of the bridges. Many other bridges built in the same era have potential for similar grout voiding. When voids occur in the PT ducts, the post tensioning strands (wires) corrode at a faster rate than those fully protected by grout. Since the PT strands are an integral part of the structure, corrosion can lead to reduced service life, reduced load posting, or structural failure.

This RFP solicits proposals from contractors to inspect for voids in certain bridges using borescope methods, and fill any voids using vacuum grouting technology in the PT ducts. The work will include inspection and grouting on Bridge #02037E and Bridge #02037W in the Metro District, and investigating and filling PT ducts in the widened pier caps on Bridge #9350 in the Metro District. Additional bridges may be included in the work, if resources allow.

Project Goal:
The goals of this project are to identify and fill all voids in the subject bridges (and other bridges in the state, if resources allow), install corrosion sensors in up to five tendons, develop guidance documentation to more readily use this technology for future repairs, and identify unit costs/time of investigation and repair. The successful responder will develop a work plan for each bridge, locate voided areas in all of the PT ducts on the identified bridges using Ground Penetrating Radar (GPR) or other technologies, provide borescope inspection of the voided areas, provide photographs of the condition of the voided areas, fill the voided areas with grout, and cooperate with MnDOT’s consultant Olson Nesvold Engineers (ONE) to document the process used to identify and fill all voids.

Scope of Work and Deliverables:
The successful responder must supply all necessary equipment for identifying locations of PT tendons, drilling access ports into the tendons, inspecting and photographing the internal portions of the tendons, and vacuum grouting all voids in the tendons. The successful responder will provide all access into the box girders and all traffic control necessary to provide a safe work environment and to protect the traveling public. Any lanes closures shall be in conformance with MnDOT Traffic Control Manuals.

Task 1: Work Plan
The successful responder will develop a detailed work plan for Bridge #02037E, Bridge #02037W, and Bridge #9350. The work plan must include location of all tendon high points, means of access to the bridge, methods of investigation of all selected high points, methods of investigation of conditions, methods of vacuum grouting, and anticipated schedule for each bridge.

To aid in development of the Work Plan, the successful responder must review Report 2012-09, “Inspection of In-Place Bridges Constructed with Grouted Post-Tensioning Ducts,” published April 2012. The full report can be accessed at http://www.lrrb.org/PDF/201209.pdf.

Task Deliverables: The successful responder will provide MnDOT with three copies of a detailed work plan for each structure.
Task 2: Inspection and grouting Bridge #02037E and Bridge #02037W
The successful responder will perform borescope inspections and vacuum grouting of all high point locations in each structure. Inspections must include photographs of each location that represent conditions observed.

**Task Deliverables:** The successful responder will provide digital photographs of the condition of each high point tendon, an inspection summary of the location and size of voids found, the volume of grout used at each location, and a narrative of the overall condition of the structures.

Task 3: Inspection and grouting Bridge #9350
The successful responder will perform inspections and grouting of all high point locations in each pier cap on the structure. Inspections must include photographs of each location that represent conditions observed.

**Task Deliverables:** The successful responder will provide digital photographs of the condition of each high point tendon, an inspection summary of the location and size of voids found, the volume of grout used at each location, and a narrative of the overall condition of the structures.

Task 4: Corrosion Monitoring
The successful responder will furnish and install corrosion monitoring sensors into a minimum of five tendons to monitor corrosion of PT strands over time. The successful responder will place sensors in tendons that have voids and that show some evidence of corrosion at this time. Sensors must be able to be read with equipment/computers readily available to MnDOT, or read by equipment furnished by the successful responder annually for MnDOT’s use in obtaining readings for the next 10 years.

**Task Deliverables:** The successful responder will provide a summary of location of each sensor, and documentation outlining how corrosion readings can be taken in the future.

MnDOT/ONE Task
MnDOT, in conjunction with ONE, will write and publish a final report/manual detailing investigation and grouting methods. This report will be completed by MnDOT, and the successful responder will be required to cooperate with ONE to provide information as needed for the report.

Anticipated Project Schedule
2. Investigate and Vacuum grout Bridge #02037W and Bridge #02037E – May, 2013
4. Investigate and grout additional bridge(s) if resources permit – July, 2013.
5. Final report of bridges investigated and repaired (MnDOT) – August, 2013

Required Skills
The main person in charge of the work being done under this Contract must have a minimum of five years experience in grouting of post-tensioned concrete structures and a minimum of two years experience in repair of grouted post tensioned structures. The person in charge must also have grouting certification from the American Segmental Bridge Institute (ASBI) or comparable training course. The responder (company) must have a minimum of five years experience in grouting of post tensioned concrete structures and a minimum of two years experience in repair of grouted post tensioned structures.

Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items should be separated from the required items on the cost proposal.

Proposal Content
The following will be considered minimum contents of the proposal and must be submitted in the order listed:

1. **Contact Information:**
   Responder’s must clearly identify the company’s full, legal name, business address, the contact person’s name, telephone number, fax number and email address (as available).
2. Project Understanding:
Responder’s must provide a statement of the objectives, goals and tasks to show or demonstrate their view of the nature of the Contract.

3. Background and Experience (Company and Personnel):
Responder’s must provide an outline of their background and experience, with examples of similar work done and a list of personnel who will conduct the project, detailing their training and work experience. No change in personnel assigned to the project will be permitted without the written approval of MnDOT’s Project Manager.

4. Detailed Work Plan:
Responder’s must provide a detailed work plan, which must identify the major tasks to be accomplished. These tasks will be used as a scheduling and management tool, as well as the basis for invoicing. The work plan must present the responder’s approach, task breakdown, deliverable due dates and personnel working on the project and the hours assigned to each individual to reach the project results.

5. Detailed Deliverables:
Responder’s must provide a description of the deliverables to be provided.

6. Quality Management Plan:
Responder’s must provide a project specific Quality Management Plan (QMP) that will be used on the project. The QMP must specify how Responder will perform Quality Assurance and Quality Control (QA/QC) activities throughout the duration of the project to ensure delivery of a quality product in a timely manner that conforms to established contract requirements. Components of the QMP must include the following project specific items (as outlined in MnDOT’s current QMP Manual located at http://www.dot.state.mn.us/design/qmp/index.html):
- A List of Requirements
- Intent of the QMP
- Philosophy of the QMP
- Technical Document Review Process
- Checking Procedures
- Quality Control Verification
- Definitions

7. MnDOT Participation:
Responder’s must clearly identify the level of MnDOT’s participation that will be needed in the Contract, as well as any other services to be provided by MnDOT and details of cost allowances for this participation.

8. Forms and Documents:
Responders must complete and submit the forms and documents required under any other section of this RFP.

9. Cost Proposal:
Responder’s must provide, in a separate envelope, one copy of the cost proposal, clearly marked on the outside “Cost Proposal”, along with the responder’s official business name and address. For purposes of completing the cost proposal, MnDOT does not make regular payments based upon the passage of time; it only pays for services performed or work delivered after it is accomplished. Terms of the proposal as stated must be valid for the length of the project. If proposing an hourly rate, unit rate or lump sum, include a breakdown (labor, overhead, profit & expenses) showing how the rate was derived. If proposing a cost plus fixed fee (profit) budget, the responder’s Overhead Rate must not exceed 160%. The responder must utilize their current MnDOT approved Overhead rate, not to exceed 160%. For the purposes of this Cost Proposal, responders should utilize a fixed fee (profit) of 10%. Actual fixed fee (profit) will be determined/calculated by MnDOT upon selection. The responder must include a total project cost along with the following:
- A breakout of the hours by task for each employee.
- Identification of anticipated direct expenses.
- Identification of any assumption made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks, include this in the cost proposal but identify it as additional costs and do not make it part of the total project cost.
- Responder must have the cost proposal signed in ink by authorized member of the firm. The responder must not include any cost information within the body of the RFP technical proposal response.
Responders must limit their proposal to 20 pages, not including the cover letter and the required forms. A “page” is defined as a one-sided, 8.5”x11” piece of paper, with no smaller than 11 point font. Excess pages will not be reviewed and evaluated, regardless of content.

Questions
Responders who have any questions regarding this RFP must submit questions by e-mail only to:
   Ashley Duran, Contract Administrator
   ashley.duran@state.mn.us

All questions and answers will be posted on MnDOT’s Consultant Services Web Page at www.dot.state.mn.us/consult under the “P/T Notices” section. All prospective responders will be responsible for checking the web page for any addendums to this RFP and any questions that have been answered. Note that questions will be posted verbatim as submitted.

Questions regarding this RFP must be received by MnDOT no later than 2:00 p.m. Central Standard Time on Monday, December 17, 2012.

MnDOT anticipates posting answers to such questions no later than 2:00 p.m. Central Standard Time on Tuesday, December 18, 2012.

No other MnDOT personnel are allowed to discuss the RFP before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above may result in disqualification.

Proposal Submittal
All proposals must be mailed (United States Postal Service), expressed (UPS, FedEx or other similar express carrier) or dropped off to the attention of:
   Ashley Duran, Contract Administrator
   Minnesota Department of Transportation
   Consultant Services Section, Mail Stop 680
   395 John Ireland Boulevard
   St. Paul, Minnesota 55155-1800

   All proposals must be received no later 2:00 p.m. Central Standard Time on Thursday, December 27, 2012. Please note that MnDOT procedures do not allow non-MnDOT employees to have access to the elevators or the stairs. You should plan enough time and follow these instructions for drop-off:
   • Enter through the Rice Street side of the Central Office building (1st Floor).
   • Once you enter through the doors, you should walk straight ahead to the Information Desk.
   • Proposals are accepted at the Information Desk only. The receptionist will call the Contract Administrator to come down and to time stamp the proposal.

Submit 1 hard copy of the proposal, along with one copy of the entire proposal in electronic format (CD-ROM, flash drive, etc.). The proposal(s) must be submitted in a sealed mailing envelope or package, clearly marked “Proposal” on the outside. An authorized member of the firm must sign the proposal, in ink.

Proposal Evaluation
Representatives of MnDOT will evaluate all responses received by the deadline. In some instances, an interview may be part of the evaluation process. A 100-point scale will be used to create the final evaluation recommendation.

Project Specific QMP Evaluation Criteria
QMP evaluation criteria will focus on the strength and clarity of QMP, what value is added and the project specific scalable components of size, risk and complexity. Both the technical competencies of staff involved in this effort and the components of the QMP will be evaluated. Components of the QMP must include the following project specific items: a list of requirements, intent of the QMP, philosophy of the QMP, technical document review process, checking procedures, quality control verification and definitions. Proposal should indicate specifically how the QMP will be applied to this project.
The Factors and Weighting on Which Proposals Will Be Judged:

1. Project Understanding 10%
2. Work Plan / Detailed Deliverables 10%
3. Background and Experience of Company 20%
4. Background and Experience of Personnel 20%
5. Quality Management Plan (QMP) 10%
6. Cost Detail 30%

Proposals will be evaluated on a “best value” basis with 70% qualifications and 30% cost considerations. The review committee will not open the cost proposal until after the qualifications points are awarded.

General Information

Responders must adhere to all terms of this RFP.

Late responses will not be considered. Fax and e-mail responses will not be considered. All costs incurred in responding to this RFP will be borne by the responder.

MnDOT Not Obligated To Complete Project
This RFP does not obligate MnDOT to award a Contract or complete the project, and MnDOT reserves the right to cancel the solicitation if it is considered to be in its best interest.

Proposal Certifications
By submitting a Proposal, responders warrant that the information provided is true, correct and reliable for purposes of evaluation for potential Contract award. The submission of inaccurate or misleading information may be grounds for disqualification from Contract award and may subject the responder to suspension or debarment proceedings, as well as other remedies available to MnDOT, by law.

Disposition of Responses
All materials submitted in response to this RFP will become property of MnDOT and will become public record, in accordance with Minnesota Statutes §13.591, after the evaluation process is completed. Pursuant to the Statute, completion of the evaluation process occurs when MnDOT has completed negotiating the Contract with the successful responder. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes §13.37, the responder must:

- Clearly mark all trade secret materials in its response at the time the response is submitted,
- Include a statement with its response justifying the trade secret designation for each item, and
- Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State’s award of a contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State. The State is required to keep all the basic documents related to its contracts, including responses to RFPs for a minimum of seven years.

MnDOT will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Contingency Fees Prohibited
Pursuant to Minnesota Statutes §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

Affidavit of Noncollusion
Responders must complete the attached “Affidavit of Noncollusion” and submit it as part of the proposal.

Worker’s Compensation Insurance
The successful responder will be required to submit acceptable evidence of compliance with workers’ compensation insurance coverage requirements prior to execution of the Contract.
Pre-Award Audit Requirement
The successful responder will be required to submit pre-award audit information and comply with audit standards and failure to do so may result in disqualification.

Conflicts of Interest
Responders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFP. This list should indicate the name of the entity, the relationship and a discussion of the conflict. Responders must complete the attached “Conflict of Interest Checklist and Disclosure Form” and submit it as part of the proposal.

Organizational Conflicts of Interest
The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to MnDOT, or the successful responder’s objectivity in performing the Contract work is or might be otherwise impaired, or the successful responder has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to MnDOT, which must include a description of the action, which the successful responder has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, MnDOT may, at its discretion, cancel the Contract. In the event the respondant was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to MnDOT, MnDOT may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve MnDOT’s rights.

E-Verify Certification (In accordance with Minnesota Statutes §16C.075)
By submission of a proposal for services in excess of $50,000, responders certify that as of the date of services performed on behalf of MnDOT, responder and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of MnDOT. In the event of Contract award, the successful responder will be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc. All subcontractor certifications must be kept on file with the successful responder and made available to MnDOT upon request.

Veteran-Owned Preference
In accordance with Minnesota Statutes §16C.16 (subdivision 6a) and §16C.19, eligible certified veteran-owned small businesses will receive a 6 percent preference in the evaluation of their proposal. To be eligible for the preference, a business must have its “principal place of business” in Minnesota and must be certified by the United States Department of Veterans Affairs as either a veteran-owned small business or a service-disabled veteran-owned small business. To claim the preference, the responder must complete the “Veteran-Owned Business Preference” form and submit it with its proposal. Only eligible, certified, veteran-owned/service disabled small businesses that provide the required documentation, per the form, will be given the preference. Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be currently certified by the United States Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding certification by the United States Department of Veterans Affairs may be found at http://www.vetbiz.gov.

Early Retirement Incentive Reemployment Prohibition
Laws of Minnesota 2010, Chapter 337, Subdivision 5, provided an early retirement incentive to some State of Minnesota employees. The law provides that an individual who received an early retirement incentive payment may not be hired as a consultant by any agency or entity that participates in the State Employee Group Insurance Program for a period of three years after termination of service. By submitting a proposal under this RFP, the responder certifies that it will not utilize any former state employee in the performance of a contract who received an retirement incentive payment under Laws of Minnesota 2010, Chapter 337, unless three years have passed from the date of the employee’s separation from state service.
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

Instructions for Certification:

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
10. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
11. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant will attach an explanation to this proposal.

Affirmative Action Certification

For all Contracts estimated to be in excess of $100,000.00, responders are required to complete the attached “Affirmative Action Certification” page and submit it as part of the proposal. As required by Minnesota Rules Part 5000.3600. Minnesota Statutes §363A.36 and Minnesota Rules 5000.3400 will be incorporated into any Contract resulting from this RFP. A copy of Minnesota Statutes §363A.36 and Minnesota Rules 5000.3400-5000.3600 are available upon request from MnDOT.

Sample Contract

You should be aware of MnDOT’s standard Contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Contract is attached for your reference. Much of the language reflected in the Contract is required by statute. If you take exception to any of the terms, conditions or language in the Contract, you must indicate those exceptions in your response to this RFP; certain exceptions may result in your response being disqualified from further review and evaluation. Only those exceptions indicated in your response to this RFP will be available for discussion or negotiation.

(CSS/CM Reviewed 8/23/2012)
Travel Reimbursements
Reimbursements for travel and subsistence expenses actually and necessarily incurred by the successful responder, as a result of the Contract, will not exceed the amounts provided in the current MnDOT Travel Regulations. Reimbursements will not be allowed for travel and subsistence expenses incurred outside of Minnesota, unless the successful responder has received MnDOT’s written approval for out-of-state travel. Minnesota will be considered the home base for determining whether travel is out-of-state.

Insurance Requirements
1. **Insurance Certificates and Continuity of Coverage Required.** The successful responder must provide a certificate of insurance showing that they have each type of insurance coverage and limits required under this Contract. The certificate must be filed with MnDOT’s Authorized Representative within 30 days of execution of this Contract. Each policy and Certificate of Insurance must contain a 30 day notice of cancellation, nonrenewal or changes in coverage or limits to all named and additional insured. The successful responder must maintain such insurance in full force and effect throughout the term of this Contract.

2. **Required Insurance.** The following insurance coverages are required:
   a. **Workers’ Compensation Insurance:** Except as provided below, the successful responder will be required to provide Workers’ Compensation insurance for all its employees and, in case any work is subcontracted, will require its subcontractor(s) to provide Workers’ Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer’s Liability. Insurance minimum limits are as follows:
      $100,000.00 – Bodily Injury by Disease per employee
      $500,000.00 – Bodily Injury by Disease aggregate
      $100,000.00 – Bodily Injury by Accident
   
   If Minnesota Statutes §176.041 exempts the successful responder from Workers’ Compensation insurance requirements, or if such responder has no employees in the State of Minnesota, they will be required to provide a written statement, signed by an authorized representative, indicating the qualifying exemption.

   If, during the course of the Contract, the successful responder becomes subject to the workers’ compensation insurance requirements, they will then be required to comply with such requirements and to provide MnDOT with a Certification of Insurance evidencing such coverage.

   b. **Commercial General Liability Insurance:** The successful responder will be required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by it or by a subcontractor or by anyone directly or indirectly employed by the successful responder pursuant to the Contract. Insurance minimum limits are as follows:
      $2,000,000.00 – per occurrence
      $2,000,000.00 – annual aggregate
      $2,000,000.00 – annual aggregate – Products/Completed Operations
   
   The following coverages must be included:
   - Premises and Operations Bodily Injury and Property Damage
   - Personal and Advertising Injury
   - Blanket Contractual Liability
   - Products and Completed Operations Liability
   - State of Minnesota named as an Additional Insured

   c. **Commercial Automobile Liability Insurance:** The successful responder will be required to maintain insurance protecting the responder from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under the Contract, and in case any work is subcontracted the responder must require the subcontractor to provide Commercial Automobile Liability. Insurance minimum limits are as follows:
      $2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage
   
   In addition, the following coverages should be included:
   - Owned, Hired and Non-owned Automobile
d. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance. The successful responder will be required provide coverage for all claims the successful responder is legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to the successful responders professional services performed under this Contract. Unless otherwise specified within this Contract, the successful responder’s professional liability insurance minimum limits are as follows:

$2,000,000.00 – per claim
$2,000,000.00 – annual aggregate

On request, the successful responder must allow MnDOT to view reviewed or audited financial statements signed by a Certified Public Accountant which provides evidence that the successful responder has adequate assets to cover any deductible in excess of $50,000.00 that applies to this policy. MnDOT will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act. The retroactive or prior acts date of coverage must not be later than the effective date of this Contract and the successful responder must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be purchased to fulfill this requirement.

e. Additional Insurance Conditions:

i. The successful responder policies will be primary insurance to any other valid and collectible insurance available to MnDOT with respect to any claim arising out of the successful responder performance under this Contract;

ii. If the successful responder receives a cancellation notice from an insurance carrier affording coverage herein, the successful responder agrees to notify the State of Minnesota within five business days with a copy of the cancellation notice, unless the successful responder’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance written notice to the State of Minnesota.

iii. The successful responder policies and Certificates of Insurance will contain a provision that coverage afforded under the policies will not be canceled without at least 30 days advance written notice to MnDOT;

iv. The successful responder is responsible for payment of Contract related insurance premiums and deductibles;

v. If the successful responder is self insured, a Certificate of Self-Insurance must be attached;

vi. The successful responder policies will include legal defense fees in addition to its liability policy limits, with the exception of part d above; and

vii. The successful responder will obtain insurance policies from insurance companies having an “AM BEST” rating of “A minus”, a Financial Size Category VII, or better, and authorized to do business in the state of Minnesota.

3. Right to Terminate. MnDOT will reserve the right to immediately terminate the Contract if the successful responder is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the successful responder. All insurance policies must be open to inspection by MnDOT and copies of policies must be submitted to MnDOT’s Contract Administrator upon written request.
STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);

2. That the attached proposal submitted in response to the ______________________________________ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;

3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and

4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder’s Firm Name: _____________________________________________________________

Authorized Signature: _____________________________________________________________

Date: ______________
CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM

Purpose of this Checklist: This checklist is provided to assist proposers in screening for potential organizational conflicts of interest. The checklist is for the internal use of proposers and does not need to be submitted to MnDOT; however, the Disclosure of Potential Conflict of Interest form should be submitted in a separate envelope along with your proposal.

Definition of “Proposer”: As used herein, the word “Proposer” includes both the prime Contractor and all proposed Subcontractors.

Checklist is not Exclusive: Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a proposer determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

Use of the Disclosure Form: Proposer must complete the attached disclosure form and submit it with their Proposal (or separately as directed by MnDOT for projects not awarded through a competitive solicitation). If the proposer determines a potential conflict of interest exists, it must disclose the potential conflict to MnDOT; however, such a disclosure will not necessarily disqualify a proposer from being awarded a Contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. MnDOT Contract Management personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer may be awarded the Contract notwithstanding the potential conflict. MnDOT Contract Management personnel may consult with MnDOT’s Project Manager and Department of Administration personnel. By statute, resolution of conflict of interest issues is ultimately at the sole discretion of the Commissioner of Administration.

Material Representation: Proposer is required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The proposer must also update conflict information if such information changes after the submission of the proposal. Information provided on the form will constitute a material representation as to the award of this Contract. MnDOT reserves the right to cancel or amend the resulting Contract if the successful proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is materially false or misleading.

Approach to Reviewing Potential Conflicts: MnDOT recognizes that proposer’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. MnDOT will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not MnDOT’s intent to disqualify proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the proposer’s ability to provide objective advice to MnDOT. MnDOT would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, MnDOT must follow statutory guidance on Organizational Conflicts of Interest.

Statutory Guidance: Minnesota Statutes §16C.02, subdivision 10(a) places limits on state agencies ability to Contract with entities having an “Organizational Conflict of Interest”. For purposes of this checklist and disclosure requirement, the term “Vendor” includes “Proposer” as defined above. Pursuant to such statute, “Organizational Conflict of Interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

Additional Guidance for ProfessionalsLicensed by the Minnesota Board of Engineering: The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules part 1805.0300) Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest”.

(CSS/CM Reviewed 8/23/2012)
An organizational conflict of interest may exist in any of the following cases:

- The proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this Contract.
- The proposer, or its principals, in previous work for the state has provided the final design or related services that are directly related to performance of work required under this contract. Comment: this provision will, for example, disqualify a proposer who performed final design for the State and now seeks to provide Construction Administration Services for that same project. MnDOT believes this is necessary because the firm that prepared the plans may be unable to objectively determine plan errors and omissions. This may cause a situation where: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; and (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired.
- The proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that entity’s interests are, or may be, adverse to the state’s interests with respect to the specific project covered by this Contract. Comment: the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a MnDOT project if a local government has also retained the proposer for the purpose of persuading MnDOT to stop or alter the project plans.
- The Contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the proposer has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the Contract.
- The proposer is providing real estate or design services to a private entity, including but not limited to developers, whom the proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this Contract, when the value or potential uses of such property may be affected by the proposer’s performance of work pursuant to this Contract. “Property affected by the project” includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity’s property may be affected by the proposer’s work pursuant to the Contract when such work involves providing recommendations for right-of-way acquisition, access control and the design or location of frontage roads and interchanges. Comment: this provision does not presume proposers know nor have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the proposer has reason to believe that its performance of work under this contract may materially affect the value or viability of a project it is performing for the other entity.
- The proposer has a business arrangement with a current MnDOT employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the proposer being awarded this Contract. This item does not apply to pre-existing employment of current or former MnDOT employees, or their immediate family members. Comment: this provision is not intended to supercede any MnDOT policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a proposer may have unfair access to “inside” information.
- The proposer has, in previous work for the state, been given access to “data” relevant to this procurement or this project that is classified as “private” or “nonpublic” under the Minnesota Government Data Practices Act, and such data potentially provides the proposer with an unfair advantage in preparing a proposal for this project. Comment: this provision will not, for example, necessarily disqualify a proposer who performed some preliminary work from obtaining a final design Contract, especially when the results of such previous work are public data available to all other proposers. Rather, it attempts to avoid an “unfair advantage” when such information cannot be provided to other potential proposers. Definitions of “government data”, “public data”, “non-public data” and “private data” can be found in Minnesota Statutes Chapter 13.
- The proposer has, in previous work for the state, helped create the “ground rules” for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- The proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.
DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the proposer hereby indicates that it has, to the best of its knowledge and belief:

___ Determined that no potential organizational conflict of interest exists.

___ Determined that a potential organizational conflict of interest exists, as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

________________________________________________________________________  ______________________________
Signature                                                                 Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with MnDOT contract personnel.

________________________________________________________________________  ______________________________
Name                                                                   Phone
CERTIFICATION REGARDING LOBBYING
For State of Minnesota Contracts and Grants over $100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

________________________________________
Organization Name

________________________________________
Name and Title of Official Signing for Organization

By: ________________________
    Signature of Official

________________________________________
Date

(CSS/CM Reviewed 8/23/2012)
In accordance with Minnesota Statute §16C.16, subdivision 6a, veteran-owned businesses with their principal place of business in Minnesota and verified as eligible by the United States Department of Veterans Affairs’ Center for Veteran Enterprises (CVE Verified) will receive up to a 6 percent preference in the evaluation of its proposal.

If responding to a Request for Bid (RFB), the preference is applied only to the first $500,000 of the response. If responding to a Request for Proposal (RFP), the preference is applied as detailed in the RFP.

Eligible veteran-owned small businesses must be CVE Verified (in accordance with Public Law 109-471 and Code of Federal Regulations, Title 38, Part 74) at the solicitation opening date and time to receive the preference.

Information regarding CVE Verification may be found at [http://www.vetbiz.gov](http://www.vetbiz.gov).

Eligible veteran-owned small businesses should complete and sign this form. Only eligible, CVE Verified, veteran-owned small businesses that provide this completed and signed form will be given the preference.

I hereby certify that the company listed below:

1. Is an eligible veteran-owned small business, as defined in Minnesota Statute §16C.16, subdivision 6a; AND
2. Has its principal place of business in the State of Minnesota; AND
3. Is CVE Verified by the United States Department of Veterans Affairs’ Center for Veterans Enterprise.

Name of Company: ________________________________  Date: _____________________________

Authorized Signature: ________________________________  Telephone: _____________________________

Printed Name: ________________________________  Title: _____________________________

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IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.
STATE OF MINNESOTA – AFFIRMATIVE ACTION CERTIFICATION

If your response to this solicitation is or could be in excess of $100,000.00, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes §363A.36) certification requirement, and to provide documentation of compliance if necessary. It is your sole responsibility to provide this information and – if required – to apply for Human Rights certification prior to the due date and time of the proposal and to obtain Human Rights certification prior to the execution of the Contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.

**BOX A** – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to **BOX B**.

Your response will be rejected unless your business:

- Has a current Certification of Compliance issued by the Minnesota Department of Human Rights (MDHR)
- or-
- Has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to Box C. Include a copy of you Certification with your response**
- We do not have a current Certificate of Compliance; However, we submitted an Affirmative Action Plan to the MDHR, which the Department received prior to the date and time the response due date, indicate the time your plan was received: _______________ (date). If the date is the same as the response due date, indicate the time your plan was received: _______________ (time). **Proceed to Box C.**
- We do not have a Certification of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. We acknowledge that our response will be rejected. Proceed to Box C. Contact the MDHR for assistance. (See below for contact information)

**Please note:** Certificates of Compliance must be issued by the MDHR. Affirmative Action Plans approved by the Federal government, a county or a municipality must still be received, reviewed and approved by the MDHR before a Certification can be issued.

**BOX B** – For those companies not described in **BOX A**

Check below

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C** – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You must also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: ____________________________ Date ____________________________

Authorized Signature: ____________________________ Telephone number: ____________________________

Printed Name: ____________________________ Title: ____________________________

**For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101 TC Metro: (651) 296-5663 Toll Free: 800-657-3704

Web: www.humanrights.state.mn.us Fax: (651) 296-9042 TTY: (651) 296-1283

Email: employerinfo@therightsplace.net

(CSS/CM Reviewed 8/23/2012)
PROJECT IDENTIFICATION: ____________________________________________ 

This Contract is between the State of Minnesota acting through its Commissioner of Transportation (“State”) and [Insert the legal name and Address of the Contractor] (“Contractor”).

Recitals

1. Under Minnesota Statutes §15.061, State is authorized to engage such assistance as deemed necessary.
2. State is in need of [Provide an introduction on services being performed.]
3. Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of State.

Contract Special Terms

Article 1 Term of Contract; Survival of Terms; Incorporation of Exhibits:

1.1 Effective Date: This Contract will be effective the date that all required signatures are obtained by State, pursuant to Minnesota Statutes Section §16C.05, subdivision 2.
1.2 Expiration Date: This Contract will expire on [Insert Date], or the date that all obligations have been fulfilled and all deliverables have been approved by State, which ever occurs first.
1.3 Survival of Terms: All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Contract, including, without limitation, the following clauses: 11. Governing Law, Jurisdiction and Venue; Aids to Interpretation; Referenced Standards; 20. Audits and Inspections; 21. Government Data Practices and Intellectual Property; 23. Standard of Care; Liability for Work; 24. Deliverable Standards; 25. Indemnity; 32. Data Disclosure; and 35. Publicity and Endorsements.
1.4 Exhibits: Exhibits A through _ are attached and incorporated into this Contract.

Article 2 Scope of Work:

2.1 The services to be provided for under this Contract by Contractor are as follows: [GIVE A BRIEF DESCRIPTION OF THE SERVICES – DO NOT JUST PUT “SEE EXHIBIT A”]:
2.2 Contractor will perform the duties and provide the deliverables as specified in Exhibit _.
2.3 Deliverables are defined as the work product created or supplied by Contractor pursuant to the terms of this Contract. The brief summary of the deliverables of this Contract are as follows:

<table>
<thead>
<tr>
<th>Items</th>
<th>Date Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>A detailed list should specify in which format the State wants the deliverables</td>
<td></td>
</tr>
</tbody>
</table>

2.4 See Exhibit _ for the details on the deliverables to be provided by Contractor. [Give a full, detailed description of the deliverables to be completed by Contractor, including interim deliverable dates due, in the Exhibit]
2.5 State’s Project Manager has the authority to update and adjust all project schedules when necessary at progress meetings within the terms of the Contract.

Article 3 Items Provided and Completed by State:

3.1 After authorizing Contractor to begin work, State will furnish any data or material in it’s possession relating to the project that may be of use to Contractor in performing the work.
3.2 All such data furnished to Contractor, will remain the property of State and will be promptly returned upon State’s request or upon the expiration or termination of this Contract.

(CSS/CM Reviewed 8/23/2012)
3.3 Contractor will analyze all such data furnished by State. If Contractor finds any such data to be incorrect or incomplete, Contractor will bring the facts to the attention of State before proceeding with the part of the project affected. State will investigate the matter, and if it finds that such data is incorrect or incomplete, it will promptly determine a method for furnishing corrected data. Delay in furnishing data will not be considered justification for an adjustment in compensation.

3.4 See Exhibit _ for a detailed listing of responsibilities to be completed by State.

[SELECT CORRECT FORM OF ARTICLE 4 FROM THE FOLLOWING FOR USE WITH COST PLUS, LUMP SUM, OR UNIT RATE CONTRACT.]

Article 4 Consideration of Payment: (Cost Plus)

4.1 Contractor will be paid on a Cost Plus Fixed Fee (profit) basis as follows:

- Direct Labor Costs: $
- Overhead Rate Costs: $
- Fixed Fee Costs: $
- Direct Expense Costs: $
- Subcontractor(s) Costs: $ $

4.2 The overhead rate of XXX.XX % [For all work except Drilling, overhead rates are not to exceed 160%. Contact Audit to determine Contractor’s most recent Audited Overhead Rate] of direct Salary Costs will be used on a provisional basis determined by Mn/DOT’s Office of Audit and will not exceed 160%. [Drilling rates are NOT capped at 160%, and should be determined by Audit]

4.3 Allowable direct costs include project specific costs listed in Exhibit _. Any other direct costs not listed in Exhibit _ must be approved, in writing, by the State’s Authorized Representative prior to incurring costs.

4.4 See Exhibit _ for Budget Details on Contractor and its Subcontractor(s).

4.5 Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Minnesota Department of Transportation Travel Regulations”. Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. State of Minnesota will be considered the home base for determining whether travel is “out of state”. See Exhibit _ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.

4.6 State’s total obligation for all compensation and reimbursements to Contractor will not exceed $______________.

Article 4 Consideration of Payment: (Unit Rate)

4.1 Contractor will be paid on a Unit Rate basis as follows:

- Direct Labor Costs: $
- Direct Expense Costs: $
- Subcontractor(s) Costs: $ $

4.2 Allowable direct costs include project specific costs listed in Exhibit _. Any other direct costs not listed in Exhibit _ must be approved, in writing, by State’s Authorized Representative prior to incurring costs.

4.3 See Exhibit _ for Budget Details on Contractor and its Subcontractor(s).

4.4 Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Minnesota Department of Transportation Travel Regulations”. Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. State of Minnesota will be considered the home base for determining whether travel is “out of state”. See Exhibit _ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.

4.5 State’s total obligation for all compensation and reimbursements to Contractor will not exceed $______________.
Article 4  Consideration of Payment: (Fixed Hourly Rate)

4.1 Contractor will be paid on a Fixed Hourly Rate basis as follows:

| Labor Rate Costs:* | $ |
| Direct Expense Costs: | $ |
| Subcontractor(s) Costs: | $ |
| $ | $ |

* Labor Rate includes direct labor, overhead and profit

4.2 Allowable direct costs include project specific costs listed in Exhibit _. Any other direct costs not listed in Exhibit _ must be approved, in writing, by State’s Authorized Representative prior to incurring costs.

4.3 See Exhibit _ for Budget Details on Contractor and its Subcontractor(s).

4.4 Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Minnesota Department of Transportation Travel Regulations”. Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. State of Minnesota will be considered the home base for determining whether travel is “out of state”. See Exhibit _ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.

4.5 State’s total obligation for all compensation and reimbursements to Contractor will not exceed $__________________.

Article 4  Consideration of Payment: (Lump Sum)

4.1 Contractor will be paid on a Lump Sum basis as follows:

Total Contract Amount: $ 

4.2 State’s total obligation for all compensation and reimbursements to Contractor will be $__________________.

Article 5  Terms of Payment:

5.1 State will promptly pay all valid obligations under this Contract as required by Minnesota Statutes §16A.124.

5.2 Contractor must submit invoices electronically for payment, using the format set forth in Exhibit _. Contractor will submit invoices for payment in accordance with the following schedule: [Choose the appropriate method of payment liquidation 1. One-Time Payment upon acceptance of final deliverable; 2. Deliverable Schedule Payments; or 3. On a Monthly Basis.]

5.3 Contractor must submit a monthly progress report, using the format set forth in Exhibit _ showing the progress of work in work hours according to the tasks listed in Article 2 Scope of Work.

5.4 Contractor must submit the signed invoice, the signed progress report and all required supporting documentation, for review and payment, to State’s Consultant Services Section, at ptinvoices.dot@state.mn.us. If Contractor cannot support electronic submission of the invoice package, Contractor must contact State’s Authorized Representative for possible alternatives.

5.5 All invoices are subject to Audit, at State’s discretion.

Article 6  Contractor’s Project Team:

6.1 Contractor’s Project Manager will be:
Name/Title:
Address:
Phone:
E-Mail:

If Contractor’s Project Manager changes at any time during this Contract, Contractor will be responsible to follow conditions laid out within Article 12 of the General Terms.
Article 7  State’s Authorized Representative and Project Manager:

7.1 State’s Authorized Representative will be:
Name/Title:
Address:
Phone:
E-Mail:

State’s Authorized Representative, or his/her successor, has the responsibility to monitor Contractor’s performance and the authority to accept the services provided under this Contract. If the services are satisfactory, State’s Authorized Representative will certify acceptance on each invoice submitted for payment.

7.2 State’s Project Manager will be:
Name/Title:
Address:
Phone:
E-Mail:

State’s Project Manager, or his/her successor, has the responsibility to monitor Contractor’s performance and progress. State’s Project Manager will sign progress reports, review billing statements, make recommendations to State’s Authorized Representative for acceptance of Contractor’s goods or services and make recommendations to State’s Authorized Representative for certification for payment of each Invoice submitted for payment.

Article 8  Modification of the General Terms:

FOR ALL ENGINEERING CONTRACTS, USE THE FOLLOWING CLAUSE, UNLESS YOU HAVE AN EXCEPTION APPROVED BY AUDIT AND CONSULTANT SERVICES. YOU MAY NOT USE THE CLAUSE BELOW IN NON-ENGINEERING CONTRACTS:

8.1 Article 18.3 is deleted, as authorized by Minnesota Statutes §16C.08, subdivision 5(b) for professional services as defined in Minnesota Statutes §326.02 to §326.15.

Article 9  Additional Provisions:

9.1 E-Verify Certification (In accordance with Minnesota Statutes §16C.075). For services valued in excess of $50,000, Contractor certifies that as of the date of services performed on behalf of State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc. All subcontractor certifications must be kept on file with Contractor and made available to State upon request.

9.2 Quality Management Plan (QMP) and Quality Assurance and Quality Control Procedures. Contractor will develop a project specific QMP that specifies how Contractor will perform Quality Assurance and Quality Control (QA/QC) activities throughout the duration of the project to ensure delivery of a quality product in a timely manner that conforms to established contract requirements. Contractor will prepare the project specific QMP and distribute it to all project team members, including subcontractors. Contractor must submit the project specific QMP to State’s Project Manager for approval within five business days of Notice to Proceed.

General Terms

Article 10  Effect of General Terms; Order of Precedence

10.1 This Contract consists of the “Special Terms”, these “General Terms” and any other attachments or documents incorporated herein.

10.2 The provisions of these General Terms will be enforceable unless they are specifically modified, in writing, by the Special Terms of this Contract.

10.3 To the extent of any inconsistencies between the Special Terms and these General Terms, the Special Terms will control. Minnesota law supersedes any of the Special Terms or General Terms set forth in this Contract.

(CSS/CM Reviewed 8/23/2012)
Article 11  Governing Law, Jurisdiction and Venue; Aids to Interpretation; Referenced Standards

11.1 Minnesota law governs the validity, interpretation and enforcement of this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, will be in the applicable state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11.2 In this Contract, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to; the words “including,” “included,” “includes” and “include” are deemed to be followed by the words “without limitation”; the word “shall” means “is required to”; unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references; words such as “herein,” “hereof” and “hereunder” refer to this entire Contract and not to any particular provision or section; words not otherwise defined that have well-known technical engineering or construction industry meanings are used in accordance with such recognized meanings; references to persons include their respective permitted successors and, in the case of governmental persons, persons succeeding to their respective functions and capacities; and words of any gender used herein include each other gender where appropriate. Unless otherwise specified, lists contained in the Special Terms of this Contract defining the project or work will not be deemed all-inclusive. Contractor further acknowledges and agrees that it had the opportunity to review this Contract with legal counsel.

11.3 Except as otherwise specified in the Special Terms of this Contract, work specified by the number, symbol or title of any standard established by reference to a described publication affecting any portion of the project will comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the date that Contractor signs this Contract.

Article 12  Contractor’s Key Personnel

12.1 Contractor’s key personnel specified by name and title in the Special Terms will be considered essential to the work being performed.

12.2 If, for any reason, substitution of a key person becomes necessary, Contractor must provide two weeks’ advance written notification of the substitution to State’s Authorized Representative, if possible. The written notification must include the proposed successor’s name and a resume of his/her qualifications. State’s Authorized Representative will have the right to reject the proposed successor based upon reasonable grounds.

Article 13  Assignment

13.1 Contractor may not assign any rights or obligations under this Contract unless such assignment is approved by State’s Authorized Representative and documented in a written assignment agreement. An assignment will not be effective until the assignment agreement is fully executed.

13.2 Unless otherwise specified in the written assignment agreement, State’s approval of such assignment will not relieve Contractor from the primary responsibility for performance of the services and delivery of the goods specified in this Contract.

Article 14  Subcontracts

14.1 If Contractor is authorized by State to use, or uses, any subcontractors, Contractor will be responsible for coordinating and managing the work of such subcontractors. The use of subcontractors does not relieve Contractor from its obligation to perform the services specified in this Contract.

14.2 Contractor’s subcontracts must contain all appropriate terms and conditions of this Contract, including Articles 1, 2, 4, 5 and 6 of the Special Terms and Article 20 of the General Terms of this Contract as they apply to the subcontractor.

14.3 Contractor must, in accordance with Minnesota Statutes §16A.1245, pay subcontractors within 10 days of receiving payment from the state for undisputed services provided by subcontractors. Contractor must also pay interest, at the rate of 1.5% per month or any part of a month, to subcontractors on any undisputed amount not paid on time. The minimum monthly interest payment on a balance of $100.00 or less is $10.00.

14.4 Contractor must require subcontractors’ invoices to follow the same format and contain the same information as set forth in Article 19.

14.5 Contractor must submit a copy of all subcontracts exceeding $10,000.00 to State’s Authorized Representative no later than 30 calendar days after executing the subcontract and prior to beginning work under the subcontract. Upon request by State, a copy of any executed subcontract under $10,000.00 must be sent to State’s Authorized Representative.

(CSS/CM Reviewed 8/23/2012)
Article 15  Schedule Adjustments

15.1 For delays encountered that are beyond Contractor’s control, such as a force majeure event, and upon written request from Contractor, State’s Authorized Representative will negotiate an adjustment to the project schedule set forth in the Special Terms of this Contract. A “force majeure event” is an event beyond Contractor’s reasonable control, including, but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes and acts of war or terrorism. Contractor will use all reasonable efforts to minimize the duration and consequences of any delay resulting from a force majeure event and will give State prompt notice of the occurrence of such event.

15.2 It will be Contractor’s responsibility to promptly notify, in writing, State’s Project Manager and Authorized Representative if the project will not be completed as scheduled for any reason other than the delays described in Article 15.1. State’s Project Manager will have the authority to adjust the schedule, in writing, within the term of Contract.

15.3 The Expiration Date of this Contract can only be extended by a written Amendment to this Contract. The duration of this Contract cannot exceed five years.

Article 16  Amendments, Change Orders, Merger and Waiver

16.1 Amendments to this Contract must be in writing and must be executed and approved by the same representatives who executed and approved the original Contract, or their successors in office.

16.2 Amendments to this Contract will be considered only for unforeseen services that were not included in the initial Scope of Work or for additional services that are considered essential and are within the general Scope of Work in this Contract. Contractor’s claims for extra costs due to extra work will be disallowed unless the extra work has been approved by State’s Authorized Representative and evidenced by an executed Amendment to this Contract.

16.3 A Change Order must be in writing and approved by both parties to be effective. Change Orders may be used to provide clarification of the Scope of Work or other Contract terms, to make interim schedule adjustments not affecting the expiration date, or to provide other minor directives. Change Orders must be consistent with the basic purpose of this Contract and with the general Scope of Work identified in the Special Terms. Changes in the Total Contract Amount or Contract Expiration Date are not permitted in a Change Order.

16.4 This Contract, including all incorporated items, contains all prior negotiations and agreements between Contractor and State. No other understanding regarding the subject matter of this Contract, whether written or oral, may be used to bind either party.

16.5 Failure of a party to enforce any provision of this Contract will not constitute, or be construed as, a waiver of such provision or of the right to subsequently enforce such provision.

Article 17  Terms of Payment

17.1 State will pay Contractor for services performed and goods delivered in conformance with the requirements of this Contract. Compensation will be in accordance with the Special Terms, Article 4 “Consideration of Payment”.

17.2 If it appears at any time that Contractor might exceed the Total Contract Amount stated in the Special Terms of this Contract, Contractor must promptly notify State’s Authorized Representative in writing. State will not pay Contractor for work performed in excess of the Total Contract Amount without a written, fully executed, Amendment to this Contract. Any work performed beyond that which is provided for in this Contract without a prior written Amendment signed by State, will be deemed voluntary and Contractor will not be entitled to compensation for the extra work.

17.3 Contractor may make a claim for extra costs incurred because of any instruction, latent condition, order of a governmental authority or other condition or occurrence that was not reasonably foreseeable. Latent conditions are conditions not anticipated by the Special Terms of this Contract. Contractor must provide written notice of claim for extra costs to State as soon as it becomes aware of the facts, conditions or occurrences giving rise to such claim and in no event later than 30 calendar days thereafter. State may refuse any claim made without a written notice. State’s Authorized Representative will have the sole authority to determine whether any claimed extra costs are reasonable under the circumstances and whether State will approve the extra costs. If State determines that such a claim is valid, in whole or in part, the parties will cooperate to promptly negotiate an equitable amendment. Any work performed under an amendment to this Contract that has not been properly approved and executed by the parties will be performed at Contractor’s own risk.
17.4 State will not pay overtime rates for any overtime worked by Contractor or a subcontractor unless State’s Authorized Representative has specifically authorized overtime, in writing. When State’s Authorized Representative has authorized overtime work, overtime premium pay will be reimbursed as a direct cost for the overtime portion of the hourly rate and is not eligible for overhead costs or profit.

17.5 If authorized in the Special Terms, Contractor will be reimbursed for travel and subsistence expenses actually and necessarily incurred to perform this Contract. Such travel and subsistence expenses will not exceed the amount defined in the Special Terms, and will be reimbursed in the same manner and in no greater amount than provided in the current “Minnesota Department of Transportation Travel Regulations”. Contractor will not be reimbursed for travel and subsistence expenses incurred outside the state of Minnesota unless it has received prior written approval from State for such out of state travel or unless such travel has been authorized by the Special Terms of this Contract. The state of Minnesota will be considered the home base for determining whether travel is “out of state”.

17.6 The final payment due Contractor will be based on actual acceptable costs as determined by an audit conducted by State. The audit will be conducted using the Cost Principles and Procedures set forth in the Federal Acquisition Regulations, 48 Code of Federal Regulations Section 31, as modified by state policies and procedures. Based upon final audit, the final payment to Contractor may exceed the Total Contract Amount without amending this Contract. State will pay the final payment due Contractor within 30 days of completion of the audit.

Article 18 Conditions of Payment
18.1 All services and goods provided by Contractor pursuant to this Contract must be in accordance with Article 24.1.

18.2 State will notify Contractor of any defective work and offer Contractor the opportunity to correct it within a reasonable amount of time. Contractor will not receive payment for work determined by State’s Authorized Representative to be defective or performed in violation of federal, state or local laws, ordinances, rules, or regulations until and unless Contractor has made the necessary corrections. Contractor will not receive additional compensation for rework performed to correct its defective work. Contractor must include hours spent on rework/correction on itemized invoices, but will invoice such hours at a rate of zero dollars per hour.

18.3 Retainage: Pursuant to Minnesota Statutes Section §16C.08, subdivision 5(b), no more than 90 percent of the compensation due under this Contract may be paid until the final product(s) of this Contract have been reviewed by the Commissioner of the Minnesota Department of Transportation or the Commissioner’s designee. The balance due and owing will be paid when (1) the Commissioner or the Commissioner’s designee determines that Contractor has fulfilled all the terms of this Contract; and (2) any necessary final audit has been completed.

18.4 Subject to the provisions of Article 21.2.5, all services and goods covered by progress payments made by State will become the sole property of State. This provision must not be construed as relieving Contractor from its sole responsibility for all work and deliverables upon which payments have been made or from the responsibility to correct any defective work. State’s tender of progress payments will not be construed as waiving State’s right to require the fulfillment of all of the terms of this Contract.

18.5 Nothing in this Contract must be construed in any way to operate to relieve Contractor from its obligation to complete the services and deliver any goods described in this Contract for a sum not to exceed that set forth in the Special Terms.

Article 19 Procedure for Payment
19.1 State will promptly pay all valid obligations under this Contract as required by Minnesota Statutes §16A.124. State will make undisputed payments no later than 30 days after receiving Contractor’s invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, State will notify Contractor within 10 days of discovering the error. After State receives the corrected invoice, State will pay Contractor within 30 days of receipt of such invoice.

19.2 Contractor must submit invoices electronically for payment, either monthly or as otherwise stipulated in the Special Terms of this Contract. Invoices must be submitted in the form prescribed by State. Contractor must submit the signed invoice, the signed progress report and all required supporting documentation, for review and payment, to State’s Consultant Services Section, at ptinvoices.dot@state.mn.us. Invoices will not be considered “received” within the meaning of Minnesota Statutes §16A.124 until the signed documents are received by State’s Consultant Services Section.
19.3 Invoices must identify the cost for the services performed and goods delivered for the billing period and must satisfy the requirements listed below:

19.3.1 Each invoice must contain the following information: State’s Contract Number, Contractor’s invoice number (sequentially numbered), Contractor’s billing and remittance address, if different from business address, and Contractor’s original signature attesting that the invoiced services and costs are new and that no previous charge for those services and goods has been included in any prior invoice.

19.3.2 Direct nonsalary costs allocable to the work under this Contract, as specified in the Special Terms of this Contract, must be itemized and supported with invoices or billing documents to show that such costs are properly allocable to the work. Direct nonsalary costs are any costs that are not the salaried costs directly related to the work of Contractor. Supporting documentation must be provided in a manner that corresponds to each direct cost.

19.3.3 Except for Lump Sum Contracts, Contractor must provide, upon request of State’s Authorized Representative, the following supporting documentation:

19.3.3.1 Direct salary costs of employees’ time directly chargeable for the services performed under this Contract. This must include a payroll cost breakdown identifying the name of the employee, classification, actual rate of pay, hours worked and total payment for each invoice period; and

19.3.3.2 Signed time sheets or payroll cost breakdown for each employee listing dates and hours worked. Computer generated printouts of labor costs for the project must contain the project number, each employee’s name, hourly rate, regular and overtime hours and the dollar amount charged to the project for each pay period.

Article 20 Audits and Inspections

20.1 Contractor’s books, records, documents and accounting procedures and practices relevant to this Contract are subject to examination by State’s Auditors and the State Auditor or Legislative Auditor, as appropriate, for six years from State’s final payment under this Contract.

20.2 Authorized representatives of State (and the Federal Highway Administration, if federal funds are involved) have the right to inspect Contractor’s work under this Contract, whenever such representatives, in their sole discretion, deem such inspections necessary. Unless otherwise agreed by the parties, such inspections will be conducted during regular working hours.

20.3 Work Effort Audits:

20.3.1 State may conduct work effort audits for the various work tasks described in the Scope of Work. Completed work tasks will be randomly selected for Audit. Audits will include work effort reviews and effort level analysis to determine the reasonableness of the hours charged.

20.3.2 Contractor must maintain work effort progress reports showing work tasks, hours worked on the task by the various personnel assigned to this work and work effort performed by subcontractors assigned to the tasks. The progress report must be in the format as described in the Special Terms of this Contract.

Article 21 Government Data Practices and Intellectual Property

21.1 Government Data Practices. Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes Section §13.08 apply to the release of the data governed by the Minnesota Government Data Practices Act by either Contractor or the State.

21.1.1 If Contractor receives a request to release the data referred to in this Clause, Contractor must immediately notify State. State will give Contractor instructions concerning the release of the data to the requesting party before the data is released.

21.2 Intellectual Property Rights

21.2.1 Intellectual Property Rights of State. State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Contract. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Contractor, its employees, agents and subcontractors, either individually or jointly with others in the performance of this Contract. Works
includes “Documents”. Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Contractor, its employees, agents or subcontractors, in the performance of this Contract. The Documents will be the exclusive property of State and Contractor must immediately return all such Documents to State upon completion or cancellation of this Contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire”. Contractor assigns all right, title and interest it may have in the Works and the Documents to State. Contractor must, at the request of State, execute all papers and perform all other acts necessary to transfer or record State’s ownership interest in the Works and Documents.

21.2.2 Intellectual Property Rights of Contractor. Contractor retains title and interest in all of its standard details, plans, specifications and engineering computation documents (“Previously Created Works and Documents”), whether in written or electronic form, which have been incorporated into the Works and Documents, but which were developed by Contractor independent of this Contract. Contractor issues to State a royalty-free, nonexclusive and irrevocable license to use the Previously Created Works and Documents.

21.2.3 Notification. Whenever Contractor reasonably believes it, or its employees or subcontractors, has made an invention, improvement or discovery (whether or not patentable) in the performance of this Contract, and has or actually or constructively reduced it to practice, Contractor will immediately give State’s Authorized Representative written notice thereof and must promptly furnish State’s Authorized Representative with complete information and/or disclosure thereon.

21.2.4 Representation. Contractor must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents created and paid for under this Contract are the sole property of State and that neither Contractor nor its employees, agents or subcontractors retain any interest in and to the Works and Documents created and paid for under this Contract, except that Contractor need not obtain patents, copyrights or trademarks. Contractor represents that the Works and Documents created and paid for under this Contract do not and will not infringe upon any intellectual property rights of other persons or entities. Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Contractor’s expense, from any action or claim brought against State to the extent that it is based on a claim that all or part of the Works or Documents created and paid for under this Contract infringe upon the intellectual property rights of others. Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages including but not limited to reasonable attorney fees. If such a claim or action arises, or in Contractor’s or State’s opinion is likely to arise, Contractor must, at State’s discretion, either procure for State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents created and paid for under this Contract as necessary and appropriate to obviate the infringement claim. This remedy of State is in addition to and not exclusive of other remedies provided by law. This Article does not apply to Contractor’s Previously Created Works and Documents as described in Article 21.2.2.

21.2.5 State’s Reuse of Works and Documents. If the Works and Documents created and paid for under this Contract are engineering plans, specifications or recommendations requiring the certification of a licensed professional engineer, State acknowledges that such plans, specifications and recommendations have been created solely for the specific project covered by this Contract and may not be suitable for reuse on other projects. There shall be no restriction on reuse of the Works and Documents created and paid for under this Contract, but reuse without the written verification or adaptation by Contractor shall be done at State’s sole risk and without liability to Contractor.

21.3 Delivery of Documents. The originals of non-electronic deliverables required under this Contract must be relinquished to State:

21.3.1 Upon written notice of completion or termination of this Contract;
21.3.2 Upon written notification by State; or
21.3.3 Upon final payment by State to Contractor for this Contract.
Article 22  Quality Assurance and Quality Control

22.1 Contractor must have a QA/QC Plan. After executing this Contract, Contractor must promptly provide a QA/QC Plan to State’s Authorized Representative for acceptance. Contractor must adhere to the accepted QA/QC Plan in performing its work under this Contract. Contractor’s accepted QA/QC Plan is incorporated into this Contract by reference. Each deliverable submitted to State must include Contractor’s written certification that the deliverable was developed in compliance with the QA/QC Plan. State may terminate this Contract for Contractor’s failure to follow the QA/QC Plan for this Contract.

Article 23  Standard of Care; Liability for Work

23.1 In the performance of its professional services, Contractor will use that degree of care, knowledge and skill ordinarily exercised by other reputable professionals in the field under like circumstances within the State of Minnesota.

23.2 Contractor will be responsible for any damages incurred as a result of its failure to comply with the standard of care or other failure to comply with Contract requirements, and for any loss or cost to repair or remedy such non-compliance.

23.3 Contractor will not be liable for special, incidental, consequential or punitive damages, including but not limited to those arising from delay, loss of use, loss of profits or revenue, loss of financing commitments or fees or the cost of capital. State acknowledges its duty to mitigate damages.

Article 24  Deliverable Standards

24.1 Any services or goods provided by Contractor pursuant to this Contract, which do not meet the requirements of this Article 24.1, will be considered defective work. All services and goods provided by Contractor pursuant to this Contract must be in accordance with the following:
  24.1.1 The requirements and specifications set forth in the Special Terms of this Contract;
  24.1.2 The required standard of care;
  24.1.3 Applicable state and federal standards, specifications, policies and practices; and
  24.1.4 Applicable federal, state, and local laws, ordinances, rules and regulations.

24.2 State has the authority to reject services and goods that do not meet the requirements of Article 24.

24.3 Contractor will perform its duties as expeditiously as is consistent with professional care and skill and the orderly progress of the project. If Contractor fails to substantially perform its duties by the time fixed for the completion of the work, State may immediately terminate this Contract. Neither party will be held responsible for delay or failure to perform when such delay or failure is due to a “force majeure event” as defined in Article 15, and the notice required by Article 15 is provided.

24.4 Acceptance of services and goods by State is not a waiver of any provision of this Contract and does not relieve Contractor of the responsibility for correcting a subsequently-discovered failure to conform to the requirements of Article 24.

24.5 Contractor will be responsible for promptly making such revisions, repairs or corrections to its work as are necessary to meet the requirements of Article 24. Such revisions, repairs and corrections will be made without additional compensation.

24.6 It is understood by the parties that State will rely on the professional performance and ability of Contractor. Any examination by State or the Federal Highway Administration, or any acceptance or use of the work product of Contractor, will not be considered to be a full and comprehensive examination and will not be considered an approval of the work product of Contractor which would relieve Contractor from any liability or expense that could be connected with Contractor’s sole responsibility for the propriety and integrity of the professional work to be accomplished by Contractor pursuant to this Contract.

24.7 Contractor must confer with State at any time during construction or any phase of work performed by others based on deliverables provided by Contractor, when necessary for the purpose of interpreting or clarifying such deliverables. Contractor must give immediate attention to these requests so there will be minimal delay to the construction or other work as referenced.

24.8 If State determines that additional field or office work may be required due to Contractor’s failure to comply with the standards set forth in Article 24, then Contractor will be required to perform such additional work as may be necessary to bring the work into compliance with such standards. Contractor must prepare any and all plans or data needed to correct its deliverables without additional compensation, even though Contractor may already have received final payment. Contractor must give immediate attention to these changes so there will be minimal delay to the construction or other work as referenced.

(CSS/CM Reviewed 8/23/2012)
24.9 State will notify Contractor of any request for interpretation, clarification or correction. Notification may be in writing, or by telephone and confirmed in writing. Contractor will respond to such notice within three business days and will promptly perform the necessary services to minimize any delays to State. Contractor may be required to make a field review of the project site, as defined in the Special Terms of this Contract, if directed by State’s Authorized Representative, and Contractor may be required to send personnel to the appropriate State district office as part of performing the necessary services.

24.10 The foregoing notwithstanding, the parties understand and agree that Contractor must rely on documents, drawings, specifications and studies provided to Contractor by State and others on its behalf in making its opinions of conformity to specifications and standards. Contractor will not be entitled to rely on such documents, drawings or specifications that Contractor knows to be incorrect or incomplete, unless it has first brought such concerns to the attention of State and has been directed to proceed notwithstanding such concerns.

Article 25 Indemnity

25.1 Contractor must indemnify, save and hold State, its agents and employees harmless from any and all claims or causes of action, including reasonable attorney’s fees incurred by State, resulting from the negligent act or omission of Contractor, or any entity for which the Contractor is legally responsible, in the performance of this Contract. This clause will not be construed to bar any legal remedies Contractor may have for State’s failure to fulfill its obligations pursuant to this Contract.

Article 26 Insurance

26.1 Contractor must provide a certificate of insurance showing that Contractor has each type of insurance coverage and limits required under this Contract. The certificate must be filed with State’s Authorized Representative within 30 days of execution of this Contract, and prior to commencement of any work under this Contract.

26.2 Contractor must maintain and furnish satisfactory evidence of the following insurance policies:

26.2.1 Commercial General Liability Insurance, providing coverage for claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage including loss of use which may arise from work performed under this Contract, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed under this Contract. Unless otherwise specified within this Contract, Contractor’s insurance minimum limits are as follows:

- $2,000,000.00 – per occurrence
- $2,000,000.00 – annual aggregate
- $2,000,000.00 – annual aggregate – Products/Completed Operations

In addition, the following coverages are required:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Products and Completed Operations Liability
- Blanket Contractual Liability
- Name State as an Additional Insured

26.2.2 Commercial Automobile Liability Insurance, providing coverage for claims for damages for bodily injury, as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired and non-owned automobiles, which may arise from operations under this Contract, and in any case where any work is subcontracted, Contractor will require the subcontractor to maintain Commercial Automobile Liability Insurance. Unless otherwise specified within this Contract, Contractor insurance minimum limits are as follows:

- $2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages are required:

- Owned, Hired and Non-owned
26.2.3 Watercraft Liability Insurance, when necessary to use watercraft for the performance of the Contractor’s services under the terms of this Contract, either by Contractor or any subcontractor, and if excluded by commercial general liability coverage, watercraft liability with a minimum limit of $2,000,000.00 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage will apply to owned, non-owned and hired watercraft.

26.2.4 Aircraft Liability Insurance, when necessary to use aircraft for the performance of Contractor’s services under the terms of this Contract, either by Contractor or a subcontractor, aircraft liability with a minimum limit of $5,000,000.00 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage will apply to owned, non-owned and hired aircraft. State, all approving parties and all of their officers, agents and employees will be named as additional insured’s.

26.2.5 Professional/Technical, Errors and Omissions and/or Miscellaneous Liability Insurance, providing coverage for all claims Contractor is legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to Contractor’s professional services performed under this Contract. Unless otherwise specified within this Contract, Contractor’s professional liability insurance minimum limits are as follows:

- $2,000,000.00 – per claim
- $2,000,000.00 – annual aggregate

On request, Contractor must allow State to view reviewed or audited financial statements signed by a Certified Public Accountant which provides evidence that Contractor has adequate assets to cover any deductible in excess of $50,000.00 that applies to this policy. State will treat such financial statements as non-public data to the extent permitted by the Minnesota Government Data Practices Act. The retroactive or prior acts date of coverage must not be later than the effective date of this Contract and Contractor must maintain such coverage for a period of at least three years following the completion of work. If such insurance is discontinued, then extended reporting period coverage must be purchased to fulfill this requirement.

26.2.6 Railroad Protective Liability Insurance, for work on railroad property, coverage in accordance with Minnesota Department of Transportation, Specification 1708.2 (2005 Edition, including any subsequent changes or modifications to this specification) if such coverage is excluded from the insurance required by 26.2.1.

26.3 Additional Insurance Conditions:

26.3.1 Contractor’s policies will be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of Contractor’s performance under this Contract;

26.3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five business days with a copy of the cancellation notice, unless Contractor’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance written notice to the State of Minnesota.

26.3.3 Contractor’s policies and Certificates of Insurance will contain a provision that coverage afforded under the policies will not be canceled without at least 30 days advance written notice to State;

26.3.4 Contractor is responsible for payment of Contract related insurance premiums and deductibles;

26.3.5 If Contractor is self insured, a Certificate of Self-Insurance must be attached

26.3.6 Contractor’s policies will include legal defense fees in addition to its liability policy limits, with the exception of 26.2.5 above; and

26.3.7 Contractor will obtain insurance policies from insurance companies having an “AM BEST” rating of “A minus”, a Financial Size Category VII or better and authorized to do business in the state of Minnesota.

26.4 An Umbrella or Excess Liability insurance policy may be used to supplement Contractor’s policy limits to satisfy the full policy limits required by this Contract.
26.5 State reserves the right to immediately suspend this Contract if Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Contractor. If State suspends this Contract for Contractor’s noncompliance with the insurance requirements, Contractor will have 10 days from its receipt of notice of the suspension to cure the noncompliance. If Contractor does not cure its noncompliance with the insurance requirements within 10 days, State may immediately rescind this Contract. All insurance policies must be open to inspection by State, and copies of policies must be submitted to State’s Authorized Representative upon written request.

### Article 27 Independent Contractor; Workers’ Compensation

27.1 Any and all employees of Contractor, including its subcontractors, or other persons while engaged in the performance of any work or services required by Contractor under this Contract, will not be considered employees of State. Any and all claims that may arise under the Workers’ Compensation Act of Minnesota on behalf of said employees, or other persons while so engaged, and any and all claims made by any third party under the Workers’ Compensation Act of Minnesota as a consequence of any act or omission on the part of Contractor’s employees, or other person while so engaged on any of the work or services to be rendered, will in no way be the obligation or responsibility of State.

27.2 Prior to commencing work under this Contract, Contractor must present evidence, acceptable to State, that Contractor is either in compliance with the requirements of Minnesota Statutes Section §176.182, or is exempt from such requirements. If claiming exemption from such requirements, Contractor must state the specific basis on which it claims exemption. Contractor will provide Workers’ Compensation insurance for all Contractor employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers’ Compensation insurance in accordance with the statutory requirements of state of Minnesota, including Coverage B, Employer’s Liability, at limits not less than $100,000.00 bodily injury by disease per employee; $500,000.00 bodily injury by disease aggregate; and $100,000.00 bodily injury by accident. Evidence of subcontractor’s insurance must be filed with Contractor.

### Article 28 Early Retirement Incentive Reemployment Prohibition

28.1 Laws of Minnesota 2010, Chapter 337, Subdivision 5, provided an early retirement incentive to some State of Minnesota employees. The law provides that an individual who received an early retirement incentive payment may not be hired as a consultant by any agency or entity that participates in the State Employee Group Insurance Program for a period of three years after termination of service. The Contractor certifies that it will not utilize any former state employee in the performance of this Contract who received an retirement incentive payment under Laws of Minnesota 2010, Chapter 337, unless three years have passed from the date of the employee’s separation from state service.

### Article 29 Compliance with Licenses, Permits and Other Regulations

29.1 Contractor must procure all licenses, permits or other rights necessary to fulfill its obligations under this Contract in compliance with applicable federal and state laws.

### Article 30 Affirmative Action

30.1 For Contracts in excess of $100,000.00, Contractor certifies that it is either in compliance with or exempt from the requirements of Minnesota Statutes Section §363A.36.

30.2 Contractor certifies that it is an equal opportunity employer and complies with Title VI of the Civil Rights Act of 1964, and the President’s Executive Order Number 11246 as amended by Executive Order Number 11375. Accordingly, 49 Code of Federal Regulations Part 21 (including its appendices) and 23 Code of Federal Regulations Part 200 will be applicable.

30.3 If Contractor had more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months Contractor must comply with the following Affirmative Action requirements for disabled workers:

30.3.1 Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: Employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
30.3.2 Contractor will comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

30.3.3 In the event of Contractor’s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section §363A.36 and the rules of relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

30.3.4 Contractor will post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state Contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment and the rights of applicants and employees.

30.3.5 Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other Contract understanding, that Contractor is bound by the terms of Minnesota Statutes Section §363A.36 or the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

Article 31 Federal Clauses

31.1 If Federal Funds are involved with this Contract, the following additional conditions apply:

31.1.1 Federal reimbursement will be limited to the Federal share of costs which are allowable under the Federal cost principles contained in the Federal Acquisition Regulation, Contract Cost Principles and Procedures, 48 Code of Federal Regulations Part 31.

31.1.2 Contractor warrants and represents that State and the Federal Highway Administration will have a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use for federal, state or local government purposes, any patentable subject matter or copyrightable materials developed, or any rights of copyright to which State has purchased ownership, under this Contract, but such warranty and representation is subject to the provisions of Article 23. When applicable, the patent rights provisions of 48 Code of Federal Regulations Part 27 will apply to this Contract regarding rights to inventions. Such provisions are incorporated by reference and must be incorporated in all subcontracts by reference.

31.1.3 Federal-Aid Contracts: Contractor acknowledges that by signing this Contract, it certifies to the best of its knowledge and belief:

31.1.3.1 That no Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract or the making, extension, continuation, renewal, amendment or modification of any Federal grant, loan or cooperative agreement.

31.1.3.2 That if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, Contractor must complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

31.1.3.3 That this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 United States Code Section 1352. Any person who fails to file the required certification will be subject to a civil penalty.

31.1.3.4 That it must require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000.00 and that all such subcontractors must certify and disclose accordingly.

31.1.4 Contractor must comply with applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, 42 United States Code Section 7606; Section 508 of the Clean Water Act, 33 United States Code Section 1368; Executive Order Number 11738; and all applicable regulations promulgated by the United States Environmental Protection Agency.
Article 32  Data Disclosure

32.1 Pursuant to Minnesota Statutes Section §270C.65, Contractor consents to disclosure of its social security number, federal employer tax identification number and Minnesota tax identification number to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

Article 33  Printing, Paper Stock, and Ink Requirements

33.1 If this Contract results in reports or documents paid for by State, Contractor must comply with Minnesota Statutes Sections §16B.121 and §16B.122, for the purchase of printing, paper stock and printing ink.

Article 34  Officials Not to Benefit

34.1 Contractor must obtain State’s written consent prior to employing any professional or technical personnel to provide or assist Contractor in providing, services under this Contract when the personnel are or have been employed by State at any time during the time period of this Contract. This Article 34 does not apply to employees who have retired from State service during the time period of this Contract.

34.2 Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee working for Contractor, any fee, commissions, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award of making of this Contract.

Article 35  Publicity and Endorsements

35.1 Contractor must obtain State’s approval prior to releasing any publicity regarding the subject matter of this Contract. Publicity includes, but is not limited to, notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Contractor or its employees or subcontractors. Publicity does not include notices of the Contract award or identification of the project in statements of qualifications or proposals made to government agencies.

35.2 Contractor must not claim that State endorses its products or services.

Article 36  Hazardous Materials

36.1 State will notify Contractor of any knowledge or suspicion of the presence of hazardous or dangerous materials at a site or in a sample provided to Contractor. State agrees to provide Contractor with information in its possession or control relating to contamination at the work site. Except where the Contract contemplates the presence of such materials, if Contractor observes or suspects the presence of contaminants not anticipated in the Special Terms of this Contract, Contractor may terminate its work without liability to State or to others and Contractor will be paid for the services it has provided.

36.2 Neither this Contract nor the providing of services will operate to make Contractor an owner, operator, generator, transporter, treater, storer or disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage or disposal of hazardous materials.

Article 37  Safety

37.1 Contractor will provide a health and safety plan or program for its employees, but Contractor will not be responsible for another contractor, job or site health or safety unless Contractor accepts that duty in writing.

37.2 If Contractor is providing site testing and observation services, State will provide Contractor, at no cost to Contractor, with legal access to work areas to be observed or inspected by Contractor in accordance with the Contract documents, Occupational Safety and Health Administration standards and any other relevant safety requirements, unless Contractor accepts a duty to provide such safety measures in writing.

Article 38  Termination and Suspension

38.1 This Contract may be immediately terminated or suspended by State or the Commissioner of Administration, at any time, with or without cause, upon written notice to Contractor. In the event of such termination or suspension Contractor will be entitled to payment, determined on a pro rata basis, for services and goods performed or delivered, except for defective work. If such suspension is not lifted within 90 days from the notice of suspension, Contractor may terminate this Contract by providing State with a written notice of such
38.2 In the event State cannot or does not obtain funding from the Minnesota Legislature, or funding cannot be continued at a level sufficient to allow for the purchasing of the services and goods contained herein, this Contract may be immediately terminated or suspended, at State’s option, by written notice of termination or suspension delivered in person, by mail or facsimile to Contractor at the address specified in this Contract. State will not be obligated to pay for any services and goods provided by Contractor after such notice of termination. If this Contract is suspended for lack of funding, State will not be obligated to pay for any services and goods provided by Contractor after the date of suspension unless or until such suspension is lifted. If such suspension is not lifted within 90 days of such notice of suspension, Contractor may terminate this Contract by providing State with a written notice of such termination.

Article 39 Disputes

39.1 State’s Authorized Representative will be the initial interpreter of the requirements of this Contract and will judge the acceptability of the work hereunder. Claims, disputes and other matters relating to the acceptability of the work will be referred in writing to State’s Authorized Representative, with a request for a formal decision to be rendered in writing within a reasonable time. Written notice of each such claim, dispute or other matter must be delivered by Contractor to State’s Authorized Representative within 30 days of the occurrence of the event giving rise to the claim, dispute or other matter. Written supporting data must be submitted to State’s Authorized Representative within 45 days of each such occurrence, unless State’s Authorized Representative allows an additional period of time to ascertain more accurate data. Contractor will continue to perform while any such claim or dispute is pending.

39.2 The rendering of a decision by State’s Authorized Representative will be a condition precedent to Contractor’s exercise of such rights and remedies as it may have under this Contract or at law in respect to any claim, dispute or other matter.

Article 40 Discrimination Prohibited by Minnesota Statutes §181.59

40.1 Contractor will comply with the provisions of Minnesota Statutes § 181.59 which requires that Every Contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any Contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any Contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this Contract may be canceled or terminated by the State of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant Contracts for employment, and all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.