

Please Note: with the Logo requirement, the Header in this document is split. You will have to enter your Contract No. on the first AND second page of your document. Please enter carefully, and do not change the header settings.

THIS CONTRACT SHOULD GENERALLY BE USED FOR THE FOLLOWING TYPES OF WORK:

- Pre-Design
- Highway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Subsurface Utility Engineering
- Roundabouts

AND, DEPENDING ON THE SPECIFIC PROJECT, POSSIBLY THE FOLLOWING TYPES OF WORK:

- Environmental Studies
- Materials Testing
- Contract Administration

**STATE OF MINNESOTA
PROFESSIONAL AND TECHNICAL SERVICES CONTRACT**

Federal Project Number: _____

State Project Number (SP): _____

Trunk Highway Number (TH): _____

Project Identification: _____

This contract is between the State of Minnesota acting through its Commissioner of Transportation (“State”) and [FULL NAME OF THE CONTRACTOR], a [INDICATE THE TYPE OF ENTITY: Corporation/Limited Liability Company/Sole Proprietor/General Partnership/etc.], Address: [INCLUDE THE FULL ADDRESS] (“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. [IF USING FEDERAL FUNDS, INCLUDE THE FOLLOWING STATEMENT] This contract is funded in whole or in part with federal dollars from CFDA #20.205.
4. 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

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

- 1.1 Effective Date: This contract will be effective on 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; 31. Data Disclosure; and 34. Publicity and Endorsements.
- 1.4 Exhibits: Exhibits A through _ are attached and incorporated into this contract.
[DELETE THIS CLAUSE AND “INCORPORATION OF EXHIBITS” FROM ARTICLE TITLE IF NOT USING EXHIBITS.]

2. Scope of Work:

[BE SURE TO INCLUDE ANY APPLICABLE SOURCE TYPE(S) TO YOUR SCOPE OF WORK; EITHER HERE IN ARTICLE 2, OR IN YOUR SCOPE OF WORK EXHIBIT.]

- 2.1 Contractor, who is not a state employee, will provide the following services under this contract: [provide a full description of the services to be provided] **OR** complete the tasks listed in Exhibit __. [attach an exhibit with the complete project information. You are strongly encouraged to establish interim deliverable dates to help ensure that the project is making adequate progress toward a timely completion.]
- 2.2 Deliverables are defined as the work product created or supplied by Contractor pursuant to the terms of this contract. See Exhibit __ for the full details on the deliverables to be provided by Contractor under this contract. **OR** The brief summary of the deliverables of this contract are as follows:

<u>Items</u>	<u>Date Due</u>
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A detailed list should specify also specify format (i.e. disk, hard copy, number of copies, etc.)

- 2.3 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.

3. Items Provided and Completed by State:

- 3.1 After authorizing Contractor to begin work, State will furnish any data or material in its 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 must be promptly returned upon State's request or upon the expiration or termination of this contract.
- 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.]

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 *If federally funded, insert: Federal funding applies to this contract, see the "general terms" for applicable controls.*
- 4.3 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 State's Office of Audit and will not exceed 160%. [*Drilling rates are NOT capped at 160%, and should be determined by Audit*]
- 4.4 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.
- 4.5 See Exhibit __ for Budget Details on Contractor **and its Subcontractor(s)**.
- 4.6 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.
- 4.7 State's total obligation for all compensation and reimbursements to Contractor will not exceed \$_____.

(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 *If federally funded, insert: Federal funding applies to this contract, see the “general terms” for applicable controls.*
- 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 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 \$_____.

(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 *If federally funded, insert: Federal funding applies to this contract, see the “general terms” for applicable controls.*
- 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 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 \$_____.

(Lump Sum)

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

Upon Completion and State’s Acceptance of Task 1:	\$
Upon Completion and State’s Acceptance of Task 2:	\$
Upon Completion and State’s Acceptance of Task 3:	\$

- 4.2 *If federally funded, insert: Federal funding applies to this contract, see the “general terms” for applicable controls.*
- 4.3 State’s total obligation for all compensation and reimbursements to Contractor will be \$_____.

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 must submit invoices for payment [INDICATE WHEN YOU WANT THE CONTRACTOR TO SUBMIT INVOICES, FOR EXAMPLE: “on a monthly basis” OR “upon completion and State’s acceptance of all services” OR IF THERE ARE SPECIFIC DELIVERABLES, LIST HOW MUCH WILL BE PAID FOR EACH DELIVERABLE].
- 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.

6. Contractor’s Project Team:

- 6.1 Contractor’s Project Manager will be:

Name/Title:
 Address:
 Telephone:
 E-Mail:

If Contractor wishes to change its Project Manager at any time during this contract, Contractor must follow the process and meet the requirement set forth in Article 12 of the General Terms.

- 6.2 See Exhibit __ for a full listing of key personnel as defined in Article 12 of the General Terms.

7. State’s Authorized Representative and Project Manager:

- 7.1 State’s Authorized Representative will be:

Name/Title:
 Address:
 Telephone:
 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:
 Telephone:
 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.

REMEMBER – YOU CANNOT REVISE THE ACTUAL GENERAL TERMS – YOU MUST USE THIS ARTICLE TO REFLECT ANY ADJUSTMENTS TO THE GENERAL TERMS NECESSARY, AND APPROVED BY CONTRACT MANAGEMENT

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 2(10) for professional services as defined in Minnesota Statutes §326.02 to §326.15.

9. Additional Provisions:

[USE THE FOLLOWING SPACE TO INCLUDE ANY NECESSARY INFORMATION NOT COVERED ELSEWHERE IN THIS CONTRACT. **(BE SURE TO DOUBLE CHECK YOUR ARTICLE NUMBERING AS YOU ADD AND/OR DELETE ADDITIONAL PROVISIONS!)** IF NO ADDITIONAL PROVISIONS ARE NEEDED, INSERT “NONE”]

THE FOLLOWING SECTION IS REQUIRED FOR ANY CONTRACT WITH A DBE, TGB AND/OR A VETERAN-OWNED GOAL, WHETHER RGN OR A PERCENTAGE. DELETE IF NOT NEEDED.

9.1 **Contractor Payment Form Requirement.** Contractors making payments to subcontractors, regardless of their tier or **Disadvantaged Business Enterprise (DBE) [or] Targeted Group Business (TGB)/Veteran-Owned business** status, are required to complete Exhibit __, the “Contractor Payment Form”, and submit it to State’s Office of Civil Rights (OCR) until final payment is made. Contractor must include payments to subcontractors, service providers, sub-consultants and independent contractors. Failure to comply with this form and Minnesota’s prompt payment law may cause progress payments to Contractor to be withheld. Contractor must submit one copy of this form to State’s OCR and one to State’s Project Manager, no later than 10 days after receiving a payment from State.

THIS IS REQUIRED FOR ALL CONTRACTS, EXCEPT RIGHT-OF-WAY ASSISTANCE, PHOTOGRAMMETRY & REMOTE SENSING (Delete if not needed):

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.

[Use the following language for Pre-Design, Highway Design, Bridge Design and any projects that result in a “plan”.]

The project specific QMP must be developed in accordance with State’s current QMP Manual, located at:

<http://www.dot.state.mn.us/design/qmp/index.html>.

[For all **other** contracts, use the following language:]

Components of the QMP must include the following project specific items (as outlined in State’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

THIS IS REQUIRED FOR CONTRACTS FUNDED ALL OR IN PART BY STATE BOND FUNDS (Delete if not needed):

9.3 Minnesota Report on Jobs Requirements

9.3.1 Contractor is hereby advised that this project is funded all or in part by state bond funds and subject to the reporting requirements of Minnesota Statute §16A.633, Subdivision 4 (Minnesota Laws of 2012 Chapter 293, Section 28).

9.3.2 This contract is funded all or in part by Minnesota bond funds. Contractor and its subcontractors will be required to complete and submit an annual employment report, using the spreadsheet titled “Minnesota Report on Jobs Form”, which can be found on State’s Consultant Services website, on the “P/T Contract Documents” page, at: http://dotapp7.dot.state.mn.us/eDIGS_guest/DMResultSet/download?docId=1493399. Information will include, but not be limited to, the following: number of employees, job types, hourly wages, total payroll, and the number of jobs retained and created. Contractor must have a DUNS number which is a unique nine-

digit number issued by Dun & Bradstreet. The costs of providing the required report will be incidental to the contract as a whole. The report must be submitted by July 31st of every contract year.

Add any additional contract information here. If this Contract will be funded with FTA funds, additional provisions will need to be added – Contact Consultant Services.

NOTE: Known or Suspected Hazardous Materials: If Contractor will be working at a project site, or if samples will be given to them, be sure to disclose whether the presence of contaminants in the sample or at the site is known or suspected. This is important because Contractor may have the right to terminate the Contract if we fail to disclose this.

REMEMBER – YOU CANNOT REVISE THE ACTUAL GENERAL TERMS – YOU MUST USE ARTICLE 8 TO REFLECT ANY ADJUSTMENTS TO THE GENERAL TERMS NECESSARY, AND APPROVED BY CONTRACT MANAGEMENT

CONTRACT GENERAL TERMS

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.

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.

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 the successor’s qualifications. State’s Authorized Representative will have the right to reject the proposed successor based upon reasonable grounds.

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.

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.

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 Contractor must promptly notify, State's Project Manager and Authorized Representative if the project will not be completed as scheduled for any reason other than a delay 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.

16. Amendments, Change Orders, Merger and Waiver

- 16.1 To be effective, any amendment 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.

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 to 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.

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 and 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 2(10), 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 may 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.

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.

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 government, 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.

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 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. 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 will be 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 will 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 will 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.

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.

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.

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 government, 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.
- 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.

25. Indemnity

- 25.1 In the performance of this contract by Contractor, or Contractor's agents or employees, 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, to the extent caused by Contractor's: 1) intentional willful or negligent acts or omissions; 2) breach of contract or warranty; or 3) breach of the applicable standard of care. The indemnification obligations of this section do not apply if the claim or cause of action is the result of State's sole negligence. 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.

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. Contractor must maintain such insurance in force and effect throughout the term of the contract.
- 26.2 Contractor must maintain and furnish satisfactory evidence of the following insurance policies:
- 26.2.1 **Commercial General Liability Insurance**, protecting Contractor 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 work performed under this contract, whether the operations are 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

The following coverages must be included:

- 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, to the extent permitted by law

26.2.2 **Commercial Automobile Liability Insurance**, protecting Contractor 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 automobiles, which may arise from operations under this contract, and in case 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

The following coverages must be included:

- Owned, Hired and Non-owned

26.2.3 **Watercraft Liability Insurance**, when necessary to use watercraft for the performance of 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 may become 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

Any deductible will be the sole responsibility of Contractor and may not exceed \$50,000 without the written approval of State. If Contractor desires authority from State to have a higher deductible amount, Contractor must submit a request, in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current financial statements acceptable to State so that State can ascertain Contractor's ability to cover the deductible from its own resources. 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 after 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 obtained by Contractor 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 1708.3 (2014 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 must 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 is responsible for payment of contract related insurance premiums and deductibles;
- 26.3.4 If Contractor is self insured, a Certificate of Self-Insurance must be attached

- 26.3.5 Contractor's policies must include legal defense fees in addition to its liability policy limits, with the exception of 26.2.5 above; and
- 26.3.6 Contractor must obtain insurance policies from insurance companies having an "AM BEST" rating of "A minus", a Financial Size Category (FSC) 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 terminate this contract without liability to Contractor. 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.

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.

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. Unless exempt, Contractor must provide Workers' Compensation insurance for all Contractor employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation for all subcontractor employees. Workers' Compensation insurance must be in accordance with the statutory requirements of state of Minnesota, including Coverage B, Employer's Liability, at minimum limits of \$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. If during the course of the contract Contractor becomes eligible for Workers' Compensation insurance, Contractor must comply with the requirements of this section and provide State with a certificate of insurance showing such coverage.

28. Compliance with Licenses, Permits and Other Regulations

- 28.1 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.

29. Affirmative Action

- 29.1 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.
- 29.2 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.
- 29.3 If the Contract exceeds \$100,000.00 and Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then Contractor must comply with the requirements of Minnesota Statutes §363A.36 and Minnesota Rules part 5000.3400 – 5000.3600. A contractor covered by Minnesota Statutes §363A.36 because it employed more than 40 full-time employees in another state and that does not have a certificate compliance, certifies that it is in compliance with federal affirmative action requirements.

- 29.3.1 Minnesota Statutes §363A.36 requires Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate may be voided.
- 29.3.2 Minnesota Rules 5000.3400–5000.3600 implements Minnesota Statutes §363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules 5000.3400–5000.3600 including, but not limited to, parts 5000.3420–5000.3500 and 5000.3552–5000.3559.
- 29.3.3 Contractor must comply with the following affirmative action requirements for disabled workers: (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. (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. (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. (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. (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.
- 29.3.4 The consequences for Contractor’s failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by State
- 29.3.5 Contractor hereby certifies that Contractor is in compliance with the requirements of Minnesota Statutes §363A.36 and Minnesota Rules parts 5000.3400–5000.3600 and is aware of the consequences for non-compliance.

30. Federal Clauses

- 30.1 If Federal Funds are involved with this contract, the following additional conditions apply:
- 30.1.1 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.
- 30.1.2 Contractor warrants and represents that State and the federal government 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 (CFR) 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.
- 30.1.3 Federal-Aid Contracts: Contractor acknowledges that by signing this contract, it certifies to the best of its knowledge and belief:

- 30.1.3.1 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.
 - 30.1.3.2 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.
 - 30.1.3.3 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.
 - 30.1.3.4 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.
- 30.1.4 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.

31. Data Disclosure

- 31.1 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, already provided to State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring Contractor to file state tax returns and pay delinquent state tax liabilities, if any, or pay other state liabilities.

32. Printing, Paper Stock, and Ink Requirements

- 32.1 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.

33. Officials Not to Benefit

- 33.1 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 33 does not apply to employees who have retired from State service during the time period of this contract.
- 33.2 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.

34. Publicity and Endorsements

- 34.1 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.
- 34.2 Contractor must not claim that State endorses its products or services.

35. Hazardous Materials

- 35.1 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.
- 35.2 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.

36. Safety

- 36.1 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.
- 36.2 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.

37. Termination and Suspension

- 37.1 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 termination.
- 37.2 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.

38. Disputes

- 38.1 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.
- 38.2 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.

39. Discrimination Prohibited by Minnesota Statutes §181.59

- 39.1 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.

40. E-Verify Certification (In accordance with Minnesota Statutes §16C.075).

- 40.1 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.

41. Debarment Certifications

- 41.1 **Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions.** Contractor certifies that neither it nor its principals is presently debarred or suspended by State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the award of this contract was based. Contractor must provide immediate written notice to State's Authorized Representative if at any time Contractor learns that this certification was erroneous when submitted or becomes erroneous by reasons of changed circumstances.
- 41.2 **Certification Regarding Debarment and Suspension.** Federal money will be used (or may potentially be used) to pay for all or part of the work under the contract; therefore, this contract is a covered transaction for purposes of 49 Code of Federal Regulations (CFR) Part 29. As such, Contractor is required to verify that none of Contractor, its principals (as defined by 49 CFR 29.995) or affiliates (as defined by 49 CFR 29.905) are excluded or disqualified as defined by 49 CFR 29.940 and 29.945.

Contractor is required to comply with 49 CFR, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower tier covered transaction it enters into. By signing and submitting this contract, Contractor certifies, as follows:

The certification in this clause is a material representation of fact relied upon by State. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to State, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this contract. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

42. Plain Language; Accessibility Standards

- 42.1 **Plain Language.** Contractor must provide all deliverables in "Plain Language". Executive Order 14-07 requires the Office of the Governor and all Executive Branch agencies to communicate with Minnesotans using Plain Language. As defined in Executive Order 14-07, Plain Language is a communication which an audience can understand the first time they read or hear it. To achieve that, Contractor will take the following steps in the deliverables:
- Use language commonly understood by the public;
 - Write in short and complete sentences;
 - Present information in a format that is easy-to-find and easy-to-understand; and
 - Clearly state directions and deadlines to the audience.
- 42.2 **Accessibility Standards.** Contractor agrees to comply with the State of Minnesota's Accessibility Standard (http://mn.gov/oet/images/Stnd_State_Accessibility.pdf) for all deliverables under this contract. The State of Minnesota's Accessibility Standards entail, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level

AA) and Section 508 of the Rehabilitation Act, as amended. Contractor's compliance with the State of Minnesota's Accessibility Standard includes, but is not limited to, the specific requirements as follows:

- All videos must include closed captions, audio descriptions and a link to a complete transcript;
- All documents, presentations, spreadsheets and other material must be provided in an accessible format. In addition, Contractor will provide native files in an editable format. Acceptable formats include InDesign, Word and Excel; and
- All materials intended for downloading and printing such as promotional brochures, must be labeled as such and the content must additionally be provided in an accessible format.

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STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minnesota Statutes §16A.15 and §16C.05.

Signed: _____

Date: _____

SWIFT Contract ID No. _____

SWIFT Purchase Order ID No. _____

DEPARTMENT OF TRANSPORTATION

(with delegated authority)

Signed: _____

Title: _____

Date: _____

CONTRACTOR

Contractor certifies that the appropriate person(s) have executed the contract on behalf of Contractor as required by applicable articles, bylaws or resolutions.

Signed: _____

Title: _____

Date: _____

COMMISSIONER OF ADMINISTRATION

Signed: _____

Date: _____