

**REQUEST FOR PROPOSALS (RFP)**  
**Minnesota Department of Transportation (MnDOT)**  
**MnPASS/Cayuga Marketing and Public Relations**

Note: This document is available in alternative formats for persons with disabilities by calling Mark Hagen, Contract Administrator at (651) 234-7686 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 Goal**

The purpose of this contract is to provide public affairs services for two MnDOT construction projects Cayuga and I-35E MnPASS. In addition to the public relations project this contract will also serve as the marketing contract for the new MnPASS lane along Interstate 35-E (I-35E).

**Project Overview**

The selected contractor will provide a range of marketing and communication services for two MnDOT construction projects located in Ramsey County on the I-35E corridor: specifically Cayuga Bridge reconstruction (<http://www.dot.state.mn.us/metro/projects/cayuga/>) project and the I-35E MnPASS Express Lane Project (<http://www.dot.state.mn.us/cayugamnpass/index.html>).

The first MnPASS Express Lane in the St. Paul area is identified on I-35E between Little Canada Road and I-94. Potential users of the I-35E MnPASS Express Lanes may be unfamiliar with MnPASS or have inaccurate perceptions about its value, purpose or pricing structure and operations. The I-35E MnPASS Express Lane marks the first time MnDOT has opened such a facility that was not first an existing carpool lane, so MnDOT must market the advantages the lane has for car pooling and transit.

MnPASS marketing duties will include development and implementation of a marketing and education strategy plan consisting of media relations, public relations, advertising, outreach and education. The goal of the MnPASS element of the project is to achieve 3,000 transponder lease agreements by the date of the I-35E MnPASS Express Lanes–Fall 2015.

On both the Cayuga reconstruction project and the MnPASS project the selected contractor's services will include providing a single point of contact for communicating important project information. On both projects the duties will include planning, coordinating and helping to host public information events, participating and coordinating with community events, writing news releases and weekly project updates, attending construction meetings, attending public officials' meetings, staffing a project hotline and e-mail address, logging a database of public contacts, providing information updates for the project website and being the first point of contact for the public, businesses and stakeholders on the project. The selected contractor will efficiently provide these services by obtaining information from various construction selected contractors, MnDOT staff and others and disseminating combined information from the separate projects in a coordinated fashion.

**Scope of Work and Deliverables:**

**1.0 Public Information Coordinator (PIC)**

Provides a PIC to serve as the single first point of contact for all communications efforts associated with the construction projects included in this contract. The PIC shall have a four-year college degree in communications or a related field and at least five years' experience in a professional communications office setting or environment. The PIC shall also have a strong working knowledge of highway and bridge construction and be experienced in customer service.

The PIC will work closely with construction contractors, MnDOT staff and local officials to remain knowledgeable regarding the current status of construction projects and the related affects to traffic, residents and businesses during the project. The PIC will attend weekly project meetings, communicate informally with project personnel and develop communication products such as weekly e-mail updates, flyers, website content, news

releases, letters and notices for individual property owners and businesses. The PIC also will communicate issues directly and with expediency to the MnDOT Conflict Prediction and Resolution Specialist to ensure known and potential conflicts do not escalate and resolution can be achieved.

One employee from the communications contractor shall be assigned as the PIC for this contract. Additional assistance will be needed to serve as the PIC in their absence due to illness or vacation. Additional assistance will be needed for times of increased work load such as public meetings and large mailings.

## **2.0 Telephone Hotline**

Provide a toll-free hotline for receiving and answering questions and requests for information about the construction projects. The hotline shall be available to the public 24 hours a day, seven days a week and be publicized in all project information materials. An immediate response is preferred, but a voice mail option is permissible. All voice mail messages shall be replied to by the PIC within one working day of receipt.

## **3.0 Electronic Communications**

Promote existing project website and e-mail address as the main mode of obtaining information about the projects. Promote, write and distribute a weekly e-mail update that provides detailed project information usable by a variety of audiences, including commuters, businesses and residents. The PIC shall respond to all e-mail inquiries within one business day of receipt.

Develop website content and coordinate with MnDOT Metro District Public Affairs/Communications staff to get new updates and web content posted to the site as it is developed. Work with local agencies to provide website links and coordinate web information.

## **4.0 Business/institutional Outreach**

Provide periodic updates by e-mail and mail to local businesses. Establish direct communication with the businesses most affected by the projects by meeting in person with owners and managers. Work with the MnDOT business liaison, MnDOT construction staff and the construction contractor's staff to provide timely project information. Consider holding Open Houses specifically for businesses affected as the need arises.

## **5.0 Residential Outreach**

Provide updates by e-mail (Constant Contact), promote to residents and mail to home and property owners affected by the construction work. Meet face-to-face with property owners as needed or when requested. Provide timely information about access restriction, utility service issues, noise and other project impacts. Attend neighborhood events and host open houses to communicate upcoming project changes and impacts.

## **6.0 Open Houses/Celebrations**

Plan, coordinate, and staff open houses and milestone celebrations at various times and locations. Examples are upcoming road and bridge closures, bridge openings, etc. Provide for room arrangements, signs and displays, refreshments and staffing. MnDOT and construction contractor staff will participate in all open houses as presenters and to meet with attendees individually.

## **7.0 Media Relations**

An ongoing media relations effort is managed by MnDOT with support from the Contractor. The Contractor shall immediately notify MnDOT of any situations involving the media and all communication requests shall be forwarded to MnDOT. The PIC will write drafts of news releases for MnDOT approval and distribution as noted in 1.0.

## **8.0 Monthly Activity Summary**

Produce a monthly summary of all communications activity. Log in-person visits, telephone calls, e-mails, open house attendance, meetings, complainant phone numbers or e-mails and media inquiries with a short description (date and time, name and address, staff involved) including the issues and resolution for each communication activity.

## **9.0 MnPASS Marketing/Education**

**Develop a marketing and education strategy** Review available secondary research and background information

on travel patterns along I-35E, and demographic information on communities, and conduct focus groups to determine public reaction/perception of MnPASS among motorists and East Metro employers and partners. Develop profile/list of MnPASS market communities and businesses along corridor. Develop a marketing and education plan that would include media events, media kits, corporate relations events, memberships in key community organizations, activities and materials, corporate advertising strategy, etc. MnDOT estimates these direct costs to be no more than \$50,000.

**9.1 Implement the marketing and education campaign that raises awareness of MnPASS**

Implement a marketing campaign based on the marketing and education plan developed in the previous subtask. Educational campaign will build awareness of MnPASS among opinion leaders, stakeholders and businesses whose employees use I-35E, and commercial users who travel the corridor. Coordinate with MnDOT’s partners/other public agencies to raise awareness of value of MnPASS to transit and carpoolers.

**9.2 Develop and implement advertising plan**

Develop and implement a advertising/public information plan for the final six months prior to opening on the I-35E MnPASS Express Lane and six months following the opening that promotes its use and encourages motorists to sign up for a transponder lease agreement.

Include out-of-home, radio, television, digital and other tactics that may be useful by 2015. Work with MnDOT to establish customer service presence in East Metro. Develop public information strategy to be staffed by MnDOT employees. MnDOT estimates direct costs of this part of the proposal will not exceed \$450,000.

	Deliverable
	Marketing and Educational Strategy
	Marketing and Education Campaign
	Advertising and media Plan
	Marketing materials and media buys as per plan

Produce a monthly summary of all communications activity. Log in person visits, telephone calls, emails, open houses, meetings, and media inquiries with a short description of the issues and resolution for each communication activity.

**10.0 MnDOT Deliverables:**

- 10.1** Graphic and visualization as needed as well as MnDOT Contact information to assist with graphics and visualization.
- 10.2** MnDOT staff review of all communications within one business day.
- 10.3** Provide MnDOT boilerplate for e-mail response
- 10.4** Project layouts for meetings
- 10.5** Provide existing mailing lists already compiled for residents and businesses.
- 10.6** Handle ALL media requests. Meet residents as needed along with contractor. Attend and provide presentations to all public and community meetings.

**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 company name, business address, the contact person’s name, telephone number, fax number and email address (as available).
- 2. Project Understanding:** A statement of the objectives, goals and tasks to show or demonstrate the responder's view of the nature of the Contract.
- 3. Background and Experience (Company and Personnel):** An outline of the responder’s 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:** A detailed work plan that will identify the major tasks to be accomplished and 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:** A description of the deliverables to be provided by the responder.
6. **MnDOT Participation:** Identification of the level of MnDOT's participation in the Contract, as well as any other services to be provided by MnDOT and details of cost allowances for this participation.
7. **Forms and Documents:** The forms and documents required under any other section of this RFP.
8. **Cost Proposal:** 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.
  - Separate media buy costs from remainder of cost proposal.
  - 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 30 pages, with no smaller than 11 point font, not including the cover letter and the required forms. Excess pages will not be reviewed and evaluated.

### Questions

Responders who have any questions regarding this RFP must submit questions no later than **1:00 p.m. Central Daylight Time on Wednesday, October 17, 2012**, by e-mail only to:

Mark Hagen  
mark.hagen@state.mn.us

All questions and answers will be posted on MnDOT's Consultant Services Web Page at [www.dot.state.mn.us/consult](http://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.**

MnDOT anticipates posting answers to such questions by **2:00 p.m. Central Daylight Time on Monday, October 22, 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:

Mark Hagen, Contract Administrator  
Minnesota Department of Transportation  
1500 West County Road B2  
Roseville, MN 55113

All proposals must be received no later than **1:00 p.m. Central Daylight Time on Thursday, November 1, 2012** indicated by

the time made by the 1<sup>st</sup> floor receptionist at the Water's Edge Building, 1500 West County Road B2, Roseville, MN 55113. Late proposals will not be considered.

Submit **8** copies of the proposal. Proposals are to be submitted in a sealed mailing envelope or package, clearly marked "Proposal" on the outside. An authorized member of the firm must sign each copy of 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.

**Factors and Weighting on Which Proposals Will Be Judged:**

1.	Project Understanding	20%
2.	Background and Experience of Company	20%
3.	Background and Experience of Personnel	20%
4.	Demonstration of ability to leverage media buys	10%
5.	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 responder 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.

### **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.

### **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.

### **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.

*The remainder of this page intentionally left blank.*

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: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## 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.** A 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 a 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’s 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’s 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.** The 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 Professionals Licensed 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 will 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 will disclose to a prospective client such facts as may give rise to a conflict of interest”.

**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 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 or 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 a potential organizational conflict of interest 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 sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans and cooperative agreements) and that all sub recipients 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

**STATE OF MINNESOTA  
VETERAN-OWNED PREFERENCE FORM**

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>.

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.

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**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 for approval, which the Department received on \_\_\_\_\_(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 5<sup>th</sup> 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



**SAMPLE CONTRACT  
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 [Insert the legal name of the Contractor], [Corporation, Partnership or Sole Proprietorship], Address: [Insert the 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, whichever 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. [DELETE THIS CLAUSE AND “INCORPORATION OF EXHIBITS” FROM ARTICLE TITLE IF NOT USING EXHIBITS.]

Article 2      Scope of Work:  
[BE SURE TO INCLUDE ANY APPLICABLE ACTIVITY CODE(S) TO YOUR SCOPE OF WORK; EITHER HERE IN ARTICLE 2, OR IN YOUR SCOPE OF WORK EXHIBIT.]

- 2.1      The services to be provided for under this Contract by Contractor are as follows: [GIVE A BRIEF DESCRIPTION OF THE SERVICES]:
- 2.2      See Exhibit \_ for additional information.
- 2.3      Deliverables are defined as the work product created or supplied by the Contractor pursuant to the terms of this Contract. The brief summary of the deliverables of this Contract are as follows:

<u>Items</u>	<u>Date Due</u>
A detailed list should specify in which format the State wants the deliverables (i.e. disk, hard copy, number of copies, etc.)	

- 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 the Contractor, including dates due, in 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 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 will 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.]*

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 *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 MnDOT'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 \$\_\_\_\_\_.

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 *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 \$\_\_\_\_\_.

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 *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 \$\_\_\_\_\_.

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 *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 \$\_\_\_\_\_.

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](mailto: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.

- Article 6 Contractor's Project Team:  
6.1 Contractor's Project Manager will be:  
Name/Title:  
Address:  
Phone:  
Fax:  
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 16 of the General Terms.

- 6.2 See Exhibit \_ for a full listing of key personnel as defined in 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:  
Fax:  
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:  
Fax:  
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:

**BE SURE TO DOUBLE CHECK YOUR ARTICLE NUMBERING AS YOU ADD AND/OR DELETE 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 IS FOR ALL CONTRACTS EXCEPT RIGHT-OF-WAY ASSISTANCE, PHOTOGRAMMETRY & REMOTE SENSING. INCLUDE THE FOLLOWING LANGUAGE (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

**9.3 IS FOR CONTRACTS FUNDED ALL OR IN PART BY AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA). INCLUDE THE FOLLOWING LANGUAGE (Delete if not needed):**

- 9.3 American Recovery and Reinvestment Act (ARRA) Requirements

- 9.3.1 This Contract is funded all or in part by the ARRA. Contractor and its subcontractors will be required to complete monthly employment reports as set forth in Exhibit \_. Information will include the number of employees, total hours for employees and total wages for employees. The report must be submitted no later than the 10<sup>th</sup> day of each month. Contractor must have a DUNS number which is a unique nine-digit number issued by Dun & Bradstreet. Contractor will be required to be current with the monthly report before invoices are processed and paid. The costs of providing the required report will be incidental to the Contract as a whole.
- 9.3.2 Section 902 of the ARRA of 2009 provides the United States Comptroller General and his representatives with the authority to:
- Examine any records of Contractor, or any of its subcontractors, or any State or local agency administering such Contract, that directly pertain to, and involve transactions relating to, the Contract or subcontract; and
  - Interview any officer or employee of Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
- 9.3.3 Accordingly, the Comptroller General and his representatives will have the authority and rights as provided under Section 902 of the ARRA with respect to this Contract, which is funded with funds made available under the ARRA. Section 902 further states that nothing in this section may be interpreted to limit or restrict in any way any existing authority of the Comptroller General.
- 9.3.4 Section 1515(a) of the ARRA provides authority for any representatives of the Inspector General to examine any records or interview any employee or officers working on to this Contract. Representatives of the inspector general have the authority to examine any record and interview any employee or officer of Contractor, its subcontractors or other firms working on this Contract.

Section 1515(b) further provides that nothing in this section may be interpreted to limit or restrict in any way any existing authority of an inspector general.

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.

### 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.
- 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 “will” 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.

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 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.

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](mailto: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 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.

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.
- 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 a 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 termination.

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.