



MINNESOTA MULTI-PURPOSE STADIUM DESIGN SERVICES AGREEMENT WBE/MBE PLAN

Section 1. Purpose

- 1.1 The Authority recognizes the legislature’s mandate that the Authority establish and attempt to meet goals for construction contracts for the Project (the “Project”) to be awarded to women- and minority-owned business enterprises (“WBE/MBE”) in a percentage at least equal to the minimum used for City of Minneapolis development projects. In furtherance of the intention of such mandate, the Authority also finds it appropriate to adopt this Plan (the “Plan”) to establish participation goals for the Design Services Agreement dated September 28, 2012 (“Design Services Agreement”) entered into between the Authority and HKS, Inc. (the “Architect”) and related to the design of the Project.
- 1.2 Minnesota Vikings Football, LLC fully supports this Plan.
- 1.3 The Authority establishes this Plan based on, among other things, the study completed by National Economic Research Associates, Inc. for the City of Minneapolis captioned “The State of Minority- and Women-Owned Business Enterprise: Evidence from Minneapolis” dated October 21, 2010 (“Disparity Study”), and supplemental reports. The Authority adopts this Plan for purposes of, including, but not limited to, ensuring a “level playing field” for WBE/MBE firms, fostering equal opportunity for WBE/MBE firms in contracts with the Authority, and reducing the relevant disparities identified in the Disparity Study.
- 1.4 Although the Authority anticipates adopting a more comprehensive program for later phases of the Project, time considerations require the Authority to adopt this Plan for the Design Services Agreement to provide clear guidance to the Architect.



- 1.5 The Authority hereby adopts the City of Minneapolis' most recent and up-to-date participation goals for construction-related professional services, based on the Disparity Study, and provided to the Authority by the City of Minneapolis. The goals are appropriate for the Design Services Agreement because the Project is located in the City of Minneapolis. The goals are as follows:
- (a) 8% participation by MBE firms, as defined below, and
 - (b) 11% participation by WBE firms, as defined below.
- 1.6 Pursuant to the Design Services Agreement and the Authority's Plan, the Architect has agreed to make every necessary and reasonable effort to achieve the goals set forth in Section 1.5. The Authority adopts this Plan to define more specifically how the goals may be met, the parameters of the Architect's necessary and reasonable efforts to meet the goals, the requirements for reporting and monitoring, and the consequences if the Architect fails to meet the goals or to make good faith efforts to achieve the goals.

Section 2. **Definitions.** For purposes of this Plan:

- 2.1 "DBE" means a disadvantaged business enterprise certified by the Minnesota Uniform Certification Program ("MUCP") and found in the MUCP directory at: <http://mnucp.metc.state.mn.us/>.
- 2.2 "TGB" means a targeted group business certified by the Minnesota Department of Administration and found in the Minnesota Department of Administration Materials Management website at: <http://www.mmd.admin.state.mn.us/process/search/>.

Each TGB must also be identified by one or more of the following designations used in the Department of Administration's website: (A), (B), (H), (I), (E), or (W). (The legend at the bottom of the directory page of the website provides this information.) Firms identified solely by a (D), (L), (M) or (R) (which represent disabled-owned firms and firms in economically disadvantaged geographic areas) do not meet the definition of a TGB.



- 2.3 “MBE” means a minority-owned DBE or TGB, including a woman-owned DBE or TGB.
- 2.4 “WBE” means a non-minority woman-owned DBE or TGB.
- 2.5 “Subconsultant” means any entity the Architect subcontracts with for any part of the Architect’s Design Services performed pursuant to the Design Services Agreement, including without limitation vendors and suppliers. “Subconsultant” also includes sub-subconsultants, vendors, and suppliers of any tier.
- 2.6 “Good faith efforts” means the necessary and reasonable efforts to meet the goals of this Plan, including without limitation the good faith efforts described in this Plan.

Section 3. Achievement of Participation Goals

- 3.1 Because the Architect is not an MBE or WBE, the Architect intends to meet the participation goals of this Plan by entering into subconsulting agreements with various design firms, service providers, suppliers, and other vendors, which in turn may enter into various agreements with lower-tier design firms, service providers, suppliers, or vendors.
- 3.2 The Architect is not required to meet, or to make good faith efforts to meet, the goals of this Plan for each individual subconsulting agreement it enters into. Instead, the Architect may meet, or make good faith efforts to meet, the goals of this Plan by aggregating participation from all of its subconsulting agreements. As part of its good faith efforts, the Architect may request participation at different levels from different subconsultants.
- 3.3 The Architect may count toward the WBE/MBE goal the value (or a percentage of the value, as discussed below) of the various subconsultants’ contracts for work performed on the Project, if one of the following five criteria is met:
 - (i) The subconsultant is a DBE that has been certified as a DBE at the time of execution of the subconsulting agreement to which it is a party;



- (ii) The subconsultant is a TGB that has been certified as a TGB at the time of execution of the subconsulting agreement to which it is a party;
- (iii) The subconsultant is a Minnesota-based company eligible to be certified as a DBE or TGB, applies to become certified as a DBE or TGB within one month of execution of the subconsulting agreement to which it is a party, and achieves certification as soon as practicable, and generally within two months of the application;
- (iv) The subconsultant is not a Minnesota-based company, has been certified as a DBE in its home state, applies to become certified in Minnesota as a DBE within one month after execution of the subconsulting agreement to which it is a party, and achieves certification as a DBE in Minnesota as soon as practicable, and generally within two months of the application; or
- (v) The subconsultant is not a Minnesota-based company, has not been certified as a DBE in its home state, applies to become certified as a DBE in its home state within one month after execution of the subconsulting agreement to which it is a party, achieves certification as a DBE in its home state as soon as practicable, applies to become certified in Minnesota as a DBE within one month of its certification as a DBE in its home state, and achieves certification as a DBE in Minnesota as soon as practicable, and generally within two months of the application.

3.4 Whether the Architect achieves the goals of this Plan will be evaluated and determined as the Project progresses and at the end of the Project based on the total contract amount of the Design Services Agreement (“Total Contract Amount”), multiplied by the 8% MBE goal and the 11% WBE goal.

The present contract amount of the Design Services Agreement is \$34,000,000, including fees and a preliminary estimate of \$1,900,000 Reimbursable Expenses (as defined by the Design Services Agreement). For purposes of this Plan, the Total Contract Amount does not include Reimbursable Expenses incurred by the Architect and its subconsultants.



The Architect shall report these Reimbursable Expenses to the Authority as part of its reporting obligations pursuant to Section 4.3.

Assuming the Total Contract Amount of the Design Services Agreement net of Reimbursable Expenses is \$32,100,000, then the total dollar amount of MBE contracts necessary to meet the MBE participation goal would be \$2,568,000, and the total dollar amount of WBE contracts necessary to meet the WBE participation goal would be \$3,531,000. If the total dollar amount of MBE and WBE contracts meets or exceeds the established participation goals, then the Authority will determine that the goals of this Plan have been met.

- 3.5 The Authority will utilize the following guidelines in determining the percentage of WBE/MBE participation that will be counted toward the overall WBE/MBE goal:
- (a) The value of work performed by a firm after it has applied for certification but before it actually receives certification as a DBE or TGB will be counted toward the WBE/MBE goal.
 - (b) The value of work performed by a firm after it has ceased to be certified as a DBE or TGB will not be counted toward the WBE/MBE goal.
 - (c) If a DBE or TGB's certification lapses, the value of work performed by a firm during any period of lapsed certification as a DBE or TGB will not be counted toward the WBE/MBE goal.
 - (d) Only amounts paid to a subconsultant will be counted toward the WBE/MBE goal; participation of a subconsultant will not be counted until the amount has been paid to the subconsultant.
 - (e) The value of the work actually performed by a WBE/MBE will be counted toward the WBE/MBE goal as follows:
 - (i) The entire amount of that portion of a contract that is performed by the WBE/MBE's own forces, including the cost of supplies and materials obtained by the WBE/MBE for the work of the contract, including supplies purchased or equipment leased by the WBE/MBE, will apply to the WBE/MBE goal. Reimbursable Expenses as defined by



the Design Services Agreement will not apply to the WBE/MBE goal.

- (ii) Fees or commissions charged by a WBE/MBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, will apply to the WBE/MBE goals.
- (iii) When a WBE/MBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward WBE/MBE goals only if the WBE/MBE's subcontractor is itself a WBE/MBE. Work that a WBE/MBE subcontracts to a non- WBE/MBE firm will not count toward WBE/MBE goals.
- (iv) When a WBE/MBE performs as a participant in a joint venture or consortium, the Authority will only count toward WBE/MBE goals that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the WBE/MBE performs with its own forces.
- (v) The Authority will count the value of a contract of a WBE/MBE subconsultant toward WBE/MBE goals only if the WBE/MBE is performing a commercially useful function on that contract.
- (vi) A WBE/MBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a WBE/MBE is performing a commercially useful function, the Authority will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the WBE/MBE credit claimed for its performance of the work, and other relevant factors.



- (vii) A WBE/MBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of WBE/MBE participation. In determining whether a WBE/MBE is such an extra participant, the Authority will examine similar transactions, particularly those in which WBE/MBEs do not participate.
- (viii) When a WBE/MBE is presumed not to be performing a commercially useful function as provided in this Plan, the WBE/MBE may present evidence to rebut this presumption. The Authority may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

Section 4. **Monitoring and Reporting**

- 4.1 The Authority intends to monitor the Architect's efforts to achieve the participation goals of this Plan during the Architect's solicitation of, and contracting with, subconsultants as well as after the award of the subconsulting agreements and performance of the work. The Architect will cooperate with the Authority's monitoring plan and requests as outlined in this section.
- 4.2 Subconsultant Solicitation Phase.
 - (a) From and after the effective date of this Plan, the Architect shall require any firm proposing to become a subconsultant to provide to the Architect and Authority, before the relevant subconsulting agreement is awarded, a properly completed and signed Disadvantaged Business Enterprise (DBE) / Targeted Group Business (TGB) Commitment and Information Form attached hereto as **Exhibit A**. A firm solicited prior to the effective date of this Plan need only provide a DBE/TGB Commitment and Information Form if it is selected by the Architect to be a subconsultant.



- (i) In the DBE/TGB Commitment and Information Form, the proposer must list all firms, if any, whose participation is proposed to be credited toward meeting the WBE/MBE goals and the following information regarding each such firm:
- 1) The name of each DBE/TGB subconsultant firm, consortium, or joint venture partner that the Proposer intends to credit toward the WBE/MBE goal;
 - 2) Indicate in the respective columns if the DBE/TGB is a WBE or an MBE. If the DBE/TGB is owned by a minority woman, the proposer must allocate 100 percent of the contract value to the MBE goal;
 - 3) If the firm is not a TGB or a Minnesota DBE certified by the MUCP, identify the state in which the DBE is currently certified. (Only Minnesota based firms are eligible to be a TGB.)
 - 4) A description of how each DBE/TGB firm will participate in this contract. The WBE/MBE goal may be satisfied by DBE/TGB participation as a subconsultant, consortium, or joint venture partner.
 - 5) The estimated dollar value of each DBE/TGB's participation in the contract (net of Reimbursable Expenses) or the estimated percent of the total proposal for each DBE/TGB.
- (b) From and after the effective date of this Plan, the Architect shall require any firm proposing to become a subconsultant to provide to the Architect and Authority, before the relevant subconsulting agreement is awarded, a properly completed and signed Subconsultant Information Form attached hereto as **Exhibit B**. A firm solicited prior to the effective date of this Plan need only provide a Subconsultant Information Form if it is selected by the Architect to be a subconsultant.



- (i) Each proposer must list the sub-subconsultants, DBE/TGB, and non-DBE/TGB firms it proposes to use on the contract (section 1 of Exhibit B).
- (ii) Each proposer must list the sub-subconsultants, DBE/TGB, and non-DBE/TGB firms that the proposer interviewed or considered but did not select to be used on the contract (section 2 of Exhibit B).

4.3 Contract Performance Phase. The Architect shall submit to the Authority on a monthly basis a complete and accurate MSFA Progress Report attached hereto as **Exhibit C** and cooperate with the Authority's ongoing investigation of the Architect's good faith efforts.

Section 5. **Good Faith Efforts**

- 5.1 The Architect must make good faith efforts to achieve this Plan's participation goals and has also agreed by contract to do so.
- 5.2 Because the Architect is not an MBE or WBE, the Architect's good faith efforts to achieve the goals necessarily must focus on obtaining participation of MBE or WBE firms hired by Architect as subconsultants, as well as participation by lower-tier subconsultants.
- 5.3 The Authority shall determine if the Architect has made adequate good faith efforts. If the Architect fails to make adequate good faith efforts, the consequences are discussed in Section 6.
- 5.4 The Authority has developed the forms described in Section 4 and may develop such other forms, affidavits, and other documentation the Authority deems appropriate for the Architect to document its good faith efforts to meet participation goals and allow the Authority to determine whether good faith efforts have been made. The Architect and its subconsultants shall complete the forms the Authority requests them to complete pursuant to this Plan.
- 5.5 The Authority shall determine what information is required from the Architect, proposed subconsultant, MBE, WBE or others as the Authority deems appropriate to evaluate the Architect's good faith efforts, and shall determine what reviews, examinations and assessments of information are appropriate for such evaluation.



- 5.6 The Architect must make the good faith efforts described herein beginning with its solicitation of potential subconsultants.
- 5.7 Before the Architect enters into a contract with any subconsultant, the Architect must submit to the Authority any forms that the Authority deems appropriate.
- 5.8 The Architect must require its subconsultants to engage in similar good faith efforts as required by the Authority, and to similarly flow down their good faith efforts requirements to lower tier subconsultants. References in these requirements to the Architect shall also be deemed to refer to such lower tier subconsultants with respect to their obligations to use good faith efforts.
- 5.9 The Architect may not terminate WBE/MBE firms or otherwise remove WBE/MBE firms from participation in the Project other than for good cause.
- 5.10 To the extent proper termination of WBE/MBE firms or removal of WBE/MBE firms for good cause results in a reduction of the work performed by WBE/MBE firms, the Architect must make good faith efforts as described herein to replace those firms with other WBE/MBE firms, or otherwise increase WBE/MBE participation to offset the loss of WBE/MBE participation.
- 5.11 To the extent a change in the scope of the design work for the Project results in a reduction of work performed by WBE/MBE firms, the Architect must make good faith efforts as described herein to increase WBE/MBE participation in the remaining scope of work, or otherwise increase WBE/MBE participation to offset the loss of WBE/MBE participation.
- 5.12 In addition to compliance with the various reporting and monitoring requirements described in this Plan or developed by the Authority, the following is a list of non-exclusive factors the Authority may consider in making a determination whether the Architect has made adequate good faith efforts to meet the participation goals of this Plan:
 - (a) Soliciting through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest



of as many WBE/MBE firms as reasonably possible presently certified in the scopes of work of the contract.

- (b) Soliciting WBE/MBE firms in reasonably sufficient time prior to bid opening or the proposal deadline to allow WBE/MBE firms to respond to solicitations, or allowing sufficient time for WBE/MBE firms to respond to solicitations prior to finalizing selections of subconsultants. The Architect must determine with certainty if the WBE/MBE firms are interested by taking and documenting appropriate steps to follow up on initial solicitations.
- (c) Selecting portions of the work to be performed by WBE/MBE firms in order to increase the likelihood that the participation goals will be achieved. This includes, where appropriate, breaking out design services or other contract work into smaller units to facilitate WBE/MBE participation.
- (d) Providing interested WBE/MBE firms with adequate information about the requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (e) Negotiating in good faith with interested WBE/MBE firms and providing written documentation of such negotiation with each such business. In determining whether the Architect negotiated in good faith, the Authority may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
- (f) The fact that there may be some additional costs involved in finding and using WBE/MBE firms is not itself sufficient reason for the Architect's failure to meet the participation goals as long as such costs are reasonable.
- (g) If requested by a solicited WBE/MBE firm, the Architect must make reasonable efforts to assist such WBE/MBE firms in obtaining financing, training, or insurance as may be appropriate for their work on the Project, provided that the Architect need not provide financial assistance toward this effort.



- (h) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of WBE/MBE firms.

Section 6. Consequences of Failure to Meet Goals and Failure to Make Good Faith Efforts

- 6.1 At the end of the Project, and before the Authority pays Architect its retainage, the Authority shall determine, in the Authority's sole discretion, whether the Architect met the goals for WBE/MBE participation. If the Architect fails to meet these goals, the Authority shall also determine, in its sole discretion, whether the Architect made good faith efforts to meet the goals for WBE/MBE participation.
- 6.2 If the Authority determines the Architect failed to make good faith efforts to meet the goals for WBE/MBE participation, the Authority shall determine whether the Architect failed to make good faith efforts for the entire Project or for only a part of it.
 - (a) If the Authority determines the Architect failed to make good faith efforts for the entire Project, the Authority shall withhold payment to the Architect in the amount of the difference between the participation goals and the actual WBE/MBE participation.
 - (b) If the Authority determines the Architect failed to make good faith efforts for only part of the Project, the Authority shall withhold payment to the Architect in the amount of the difference between the Architect's commitment for that aspect of the Project, and the actual WBE/MBE participation for that aspect of the Project.

**EXHIBIT A
DISADVANTAGED BUSINESS ENTERPRISE (DBE) / TARGETED GROUP BUSINESS (TGB) COMMITMENT AND INFORMATION**

Proposer Company Name: _____

Check ONE of the following:

No DBE participation is committed on this project

The following DBE – MBE & WBE participation is committed on this project:

Firm Name <small>(Legal business name used for DBE certification)</small>	WBE <small>(Check one)</small>	MBE	How will firm participate? <small>(sub-consultant, consortium, joint venture)</small>	Home State	Description of work	Estimated dollar value of participation	Estimated percentage of total bid
					Total WBE % _____	Total MBE % _____	

(Form continued on next page. Use copies of page 1 of this form if additional space is needed to list committed DBEs and attach such copies to the form.)

DISADVANTAGED BUSINESS ENTERPRISE (DBE) / TARGETED GROUP BUSINESS (TGB) COMMITMENT AND INFORMATION

On behalf of the Proposer identified below, I certify that:

(check ONE of the following)

No DBE / TGB participation is committed on this project.

Proposer is committed to use the DBE / TGB sub-consultant(s) listed in this form on this project at the stated percentage(s).

I further certify that I have read the DBE / TGB requirements in the **Minnesota Multi-Purpose Stadium Design Services Agreement WBE/MBE Plan**. I am authorized on behalf of the Proposer to submit this certification to the Minnesota Sports Facilities Authority. This certification is a material representation of fact on which the Authority may rely in awarding the contract.

Proposer Name: _____

By: _____

Date: _____

Name: _____

Title: _____

EXHIBIT B

SUB-CONSULTANT INFORMATION FORM

Proposer Company Name: _____

Check ONE of the following:

No sub-consultants will be used by Bidder on this project.

Sub-consultants are proposed to be used on this project. The following is 1) a list of sub-consultants proposed to be used on the project AND 2) a list of sub-consultants who were considered by the Proposer for the project but were not selected by the Proposer:

1) SUB-CONSULTANTS PROPOSED TO BE USED ON THE PROJECT:

Firm Name	Address	Telephone Number

2) SUB-CONSULTANTS WHO WERE CONSIDERED BUT WERE NOT SELECTED:

Firm Name	Address	Telephone Number

(Form continued on next page. Use copies of page 1 of this form if space is needed to list additional sub-consultant firms and attach such copies to the form.)

CERTIFICATION

On behalf of the Proposer identified below, I certify that the information provided in this form is true and correct.

Proposer
Name: _____

By: _____ Date: _____

Name: _____

Title: _____

END OF DOCUMENT

Exhibit C - MSFA Progress Report

1. Project #:		9. Original Contract Amount:	\$34,000,000.00
2. Project Title:	Multipurpose Stadium - Design	10. Indirect expenses:	
3. Prime Consultant:	HKS	11. Revised Contract Amount:	
4. Type of Services:	Design Services	12. Total Earned To Date:	
5. Contract #:		13. Contract Dollars Remaining:	
6. Contract Award Date:	9/28/2012	14. Amount Paid to Date:	
7. Payment Claim #:		15. Percent Paid to Date:	
8. MSFA Progress Report #:			

GOAL 11% WBE 8% MBE		COMMITMENT 11% WBE 8% MBE				__ Interim Report		
		Reporting Period: From __ to __				__ Final Report		
A) MBE/WBE Subcontractor (SEE INSTRUCTION 1)	B) \$\$ Amount of Original MBE/WBE	C) Non- M/WBE Sub- contractor	D) \$ Amount to Non- M/WBE	E) \$ Amount in Change Orders to MCUB Contract	F) Total M/WBE Contract \$\$ Amount	G) \$\$ Amount to be paid to M/WBE	H) \$\$ Amount Paid To M/WBE	I) M/WBE%
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	
Total MBE/WBE Contract \$\$ Amount as % of Total Contract Amount (#11):								#DIV/0!
\$\$ Amount Paid to MBE/WBE To Date as % of Total Contract Amount Paid To Date (#14)								#DIV/0!
Explanation if MBE/WBE Goal Not Being Met or Other Comments:							Total MBE/WBE %	

Signature:		Date:	
Title:			

INSTRUCTIONS:

1. List each M/WBE sub-contractor only once. Insert appropriate information in Columns A), B), E), G), and H).
2. Complete Columns C) and D) only for each Non-W/MBE sub hired by the W/MBE sub.
3. Column D) shall include all W/MBE Change Order amounts passed along to Non-W/MBE.

EO Consultant Signature _____ **Date** _____