

**THIS IS A REFERENCE DOCUMENT WHICH IS THE BASIS OF FURTHER  
DEVELOPMENT BY THE AUTHORITY AND TEAM FOR AN ADDENDUM TO THE  
ARCHITECTURAL SERVICES RFP.**

**AUGUST 14, 2012**

**AGREEMENT FOR ARCHITECTURAL SERVICES**

**between**

**METROPOLITAN SPORTS FACILITIES COMMISSION**

**and**

**[ARCHITECT]**

Dated: \_\_\_\_\_, 2008

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## AGREEMENT FOR ARCHITECTURAL SERVICES

**THIS AGREEMENT**, the effective date of which is \_\_\_\_\_, 2008, by and between the Metropolitan Sports Facilities Commission, a political subdivision of the State of Minnesota (hereinafter referred to as “Owner”) and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as “Architect”), for architectural and civil, structural, mechanical, electrical and plumbing engineering design and consulting services (“Services”) as follows:

### **I. DESCRIPTION OF PROJECT**

The Owner proposes to reconstruct the multipurpose sports stadium and its related improvements (“Project”) located on the site of the Hubert H. Humphrey Metrodome in Minneapolis, Minnesota. It is anticipated that the Vikings will extend their existing use agreement or enter into a new use agreement with the Owner that will require the Vikings to play their home football games in the Project. The reconstructed stadium is intended to meet all of the revenue and fan amenity requirements of a modern National Football League professional football stadium. The reconstructed stadium will include a retractable roof and will contain approximately 65,000 seats, of which at least 7,500 will be club seats, and all of the typical support services found in a modern stadium, including but not limited to space for home and visiting teams, media, food service and concessions. The initial Architectural Program for the Project is set out in Exhibit A, and is subject to further definition as the Work progresses. This Agreement is intended to provide for the Services to be provided by the Architect for the Project and to define and describe the working relationship between the Owner and the Architect. The Owner has retained \_\_\_\_\_ to act as its Construction Manager for the Conceptual Design Phase and Schematic Design Phase of the Project.

### **II. DEFINITIONS**

In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings set forth below in this Article.

“ADA” shall mean Title III of the Americans with Disabilities Act and the regulations and definitive guidelines issued thereunder by the United States Department of Justice concerning accessibility of places and public accommodation and commercial facilities, and any Minnesota accessibility requirements.

“Additional Services” shall have the meaning set forth in Section IV.D.

“Adjacent Property” shall mean all land adjoining and surrounding the Site on which will be located any public streets, sidewalks, plazas, or bridges and any public or private parking facilities or other accoutrements to be developed by Owner or other parties in connection with the Project.

“ADR Procedures” shall have the meaning set forth in Section XIV.A.

“Applicable Laws” or “applicable laws” shall mean any applicable law, enactment, statute, code, ordinance, charter, resolution, order, rule, regulation, guideline, authorization, or

other direction or requirement of any Governmental Authority enacted, adopted, promulgated, entered or issued and in force as of the date an action is taken. Notwithstanding the foregoing, “Applicable Laws” and “applicable laws” shall expressly include all requirements, regulations and administrative orders of the City of Minneapolis, Hennepin County, and State of Minnesota, as same may be modified by variances and waivers issued in accordance with applicable laws.

“Architectural Program” shall mean that certain program of general descriptions and requirements desired by the Owner to be incorporated into the design of the Project and referred to in Exhibit A attached hereto and made a part hereof, which shall be subject to further definition as the Work progresses and shall form the basis for the preparation of the Design Documents for the Project.

“Bidding or Negotiation Phase” shall mean the Bidding or Negotiation Phase as described in Section IV.B.6.

“Conceptual Design Documents” shall mean the preliminary project work plan, programming report, and predesign document, concept sketches and renderings illustrating the scale and relationship of the Project components.

“Conceptual Design Phase” shall mean the Conceptual Design Phase of the Project as described in Section IV.B.2

“Construction Administration Phase” shall mean the Construction Administration Phase of the Project as described in Section IV.B.7.

“Construction Budget” shall mean the budget developed as provided in Article V.

“Construction Cost” shall mean the total cost of all elements of the Project designed or specified by Architect, and shall include the cost of all Work at current market rates of labor and materials, plus a construction contingency. Construction Cost does not include the following: compensation of Architect, Owner’s geotechnical, environmental or other specialty consultants, the cost of the land, rights-of-way costs or financing costs.

“Construction Drawings and Specifications” shall mean the most current working drawings, specifications and addenda describing the size, character, design, construction, materials, finishes, structure and mechanical, electrical and other systems of the Project issued by Architect.

“Construction Drawings and Specifications Phase” shall mean the Construction Drawings and Specifications Phase as described in Section IV.B.5.

“Construction Manager” shall mean such entity as Owner shall engage from time to time to perform construction management services for the Project.

“Construction Schedule” shall mean the schedule for the performance and completion of the Work prepared or approved by the Owner, as the same may be modified from time to time.

“Constructor” shall mean the general contractor or trade contractors engaged from time to time by Owner for construction of the Project. If the Owner so chooses, the Construction Manager may be the constructor of the Project and then may sometimes be referred to herein as the “Constructor”.

“Contract Documents” has the meaning at Section IV.B.5(a).

“Design Development Documents” shall mean design development drawings and outline specifications based upon and refining the Schematic Design Documents illustrating the scope, relationship, forms, size and appearance of the Work by means of plans, sections and elevations, typical construction details, and equipment layouts.

“Design Development Phase” shall mean the Design Development Phase of the Project as described in Section III.B.4.

“Design Documents” shall mean, as applicable, the Conceptual Design Documents, Schematic Design Documents, the Design Development Documents, and the Construction Drawings and Specifications.

“Design Schedule” shall mean the schedule of architectural services prepared or approved by the Owner, the most current edition of which is included in the Project Schedule attached hereto as Exhibit B.

“Final Construction Budget” shall mean the Construction Budget agreed to by Owner, Architect and Construction manager upon commencement of construction of the Project based upon the executed construction contract with the Constructor. The Final Construction Budget for purposes of this Agreement will not be adjusted for costs which result from force majeure events, Owner delays, or any changes to the Project made at the Owner’s direction or request which occur after the commencement of construction of the Project (but will be adjusted for any changes required to address acts or omissions of the Architect). The Final Construction Budget for purposes of this Agreement will include a project contingency equal to five percent (5%) of the other Construction Costs.

“Final Construction Cost” shall mean the final cost to Owner of all Work performed by the Constructor. The Final Construction Cost for purposes of this Agreement will be adjusted for all actual costs which result from force majeure events, Owner delays, and any changes to the Project made at Owner’s direction or request (but not changes required to address acts or omissions of the Architect, Construction Manager, or Constructor).

“GMP” shall mean the guaranteed maximum price for the entire Work.

“Governmental Authority” shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court agency, or any instrumentality of any of them having jurisdiction with respect to the Work, the Project, the Site or the Adjacent Property.

“Legal Requirements” shall mean the requirements set forth in any Applicable Laws.

“Legislative Approval” shall have the meaning as set forth in Section III.A.

“Lender” shall mean any bank, insurance company, trust, corporation, association, firm, partnership, Person, or other entity that has loaned or agreed to lend or otherwise provide funds or credit enhancement to enable the Owner to build the Project.

“National Football League” or “NFL” shall mean, collectively, the National Football League and/or any other Person appointed by the foregoing, or any successor substitute association or entity of which the Vikings is a member or joint owner and which engages in professional football in a manner comparable to National Football League.

“NFL Rules and Regulations” shall mean, collectively, the constitution and bylaws, and the rules, guidelines, regulations and requirements of the NFL, as applicable, all as the same now exists and which the Vikings has provided to Architect.

“Owner’s Consultants” shall have meaning provided at Section III.A.

“Owner’s Consultants Services” shall have meaning provided at Section III.A.

“Parties” shall mean the Owner and the Architect.

“Person” shall mean an individual, sole proprietorship, partnership, corporation, joint stock company, trust, unincorporated association, joint venture, limited liability company, limited liability association, unincorporated association, Governmental Authority, or any other entity.

“Phase” or “Project Phase” shall mean each of the phases as described in Section IV.B.

“Post-Construction Phase” shall mean the Post-Construction Phase of the Project as described in Section IV.B.7.

“Project” shall mean the project described in Article I.

“Project Construction Contract” means the general contract between the Owner and Constructor for construction of the Project.

“Project Schedule” shall mean the schedule that identifies, coordinates and integrates the anticipated Design Schedule and Construction Schedule, the Viking’s responsibilities, Government Authority responsibilities and reviews and other activities as are necessary for the timely completion of the Project, as revised in accordance with this Agreement.

“Schematic Design Documents” shall mean the drawings, renderings, models and video displays illustrating the scale and relationship of the various Project components, which also contain square footage or volume calculations for the building interior spaces, building exterior spaces, as well as major architectural and interior finishes.

“Schematic Design Phase” shall mean the Schematic Design Phase of the Project as described in Section III.B.3.

“Services” shall mean all Basic Services, Additional Services and other obligations of Architect under this Agreement.

“SI Base Amount” shall have the meaning provided in Section VI.B.

“Site” shall mean the site of the Hubert H. Humphrey Metrodome, located in Minneapolis, Minnesota, together with any vacated streets or other adjoining lands the Owner may acquire for expansion of the Project.

“Standard of Care” shall mean that standard of professional care, skill, diligence and quality that prevail among national design firms engaged in the planning, design, and construction administration of large scale and complex projects of similar scope, function, size, quality, complexity and detail, including the design of similar NFL stadiums in comparable urban areas throughout the United States.

“Standards” shall mean the energy saving measures and techniques adopted by Owner for the Project pursuant to Section IV.B.1(d).

“Subconsultants” shall have the meaning set forth at Section III.C.

“Substitution” shall mean any substitute product or process other than that specified in the Contract Documents that completely fulfills the requirements of the Contract Documents or for which exceptions are agreed to in writing by the Owner.

“Vikings” shall mean the Minnesota Vikings Football, LLC, or such successor entity as shall hold the National Football League franchise for the Minneapolis-Saint Paul metropolitan area.

“Work” shall mean the furnishing of all materials, labor, detailing, layout, equipment, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities and items, reasonably necessary for the full and proper performance and completion of the requirements for the Project as set forth in the Contract Documents and items reasonably inferable therefrom, whether or not performed or located on or off of the Site.

### **III. ARCHITECT’S RESPONSIBILITIES**

In addition to other responsibilities set forth throughout this Agreement, the Architect’s responsibilities shall include the following:

#### **A. PROFESSIONAL SERVICES**

The Architect shall provide the professional Services as set forth in this Agreement. Architect shall coordinate its Services with the Owner, Construction Manager, Vikings, and other members of the Project team. Architect acknowledges the critical aspect of timely completion of the Project, and agrees that its services will be performed as expeditiously as possible consistent with the Standard of Care. Architect shall provide all necessary personnel

and supervision to achieve timely completion of each Project Phase and comply with the Project Schedule.

**B. REPRESENTATIVE**

The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. \_\_\_\_\_ is hereby designated as such representative until Architect otherwise notifies Owner.

**C. AVOIDANCE OF APPEARANCE OF COMPROMISE OF JUDGMENT**

Except with the Owner's knowledge and written consent, the Architect shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to the Project.

**IV. SCOPE AND DESCRIPTION OF SERVICES**

**A. SCOPE OF SERVICES**

Under this Agreement, the Architect will provide services for the Conceptual Design and Schematic Design Phases of the Project. Upon Owner's election in writing, the Architect will also provide services for the Design Development Phase, Construction Drawings and Specifications Phase, Bidding or Negotiation Phase, Construction Administration Phase and Post-Construction Phase as set forth in this Agreement. The Architect acknowledges that the Owner may elect not to proceed with subsequent Phases of the Project beyond the Schematic Design Phase unless and until the Project has been approved by the State of Minnesota during the 2009 (or later year) Legislative Session ("Legislative Approval"). The Owner reserves the right to decide not to proceed, to proceed under this Agreement as originally executed, to negotiate an amendment to this Agreement to comport with legislative and funding requirements or other factors, or to terminate this Agreement and engage another architect or other design professionals for subsequent phases of the Project.

Architect acknowledges that, in the interest of time and cost savings, the Owner may by written election direct Architect to continue with certain Basic Services for subsequent Phases prior to Legislative Approval, and Architect will provide the requested services. Architect shall be compensated for such services as Additional Services. If Legislative Approval is obtained and the Owner elects to proceed with the Project under the terms of this Agreement, then the foregoing amounts paid to Architect as Additional Services shall be credited against the Architect's compensation for Basic Services for such subsequent Phases of the Project.

The Services the Architect shall provide under this Agreement consist of Basic Services, Additional Services, and other obligations of Architect under this Agreement. "Basic Services" consist of normal architectural services, other than Owner's Consultants Services, which the Architect shall provide directly through its employees and separate consultants ("Subconsultants," as more specifically defined at Section III.C). "Owner's Consultants Services" consist of those services provided by consultants directly hired and paid by the Owner (the "Owner's Consultants"), as listed in attached Exhibit D. The Vikings will provide or engage consultants to provide advice and counsel on premium seating and marketing. The Architect

shall be responsible for performing all Basic Services pursuant to Article VIII and Section III.C. The Owner shall pay the Architect directly for Basic Services.

1. Legal and League Related Requirements and Standards.

Architect shall review Applicable Laws relevant to Architect's Services. Architect shall also review applicable requirements of the NFL and NFL Rules and Regulations relating to the Project. Architect shall utilize the Standard of Care to prepare the Design Documents in compliance with Applicable Laws and the NFL Rules and Regulations. The Architect shall assist the Owner, and prepare documentation as may be required, in obtaining approval of Governmental Authorities having jurisdiction over the Project. The Architect represents and agrees that the Contract Documents shall conform with the Standards and all applicable restrictions, laws, codes, ordinances, statutes and regulations in effect throughout the period that the Architect is performing services under this Agreement.

2. LEED Design Services.

Architect shall design the Project to qualify for Leadership in Energy and Environmental Design (LEED) certification at a level to be agreed upon by Owner.

B. ARCHITECT'S BASIC SERVICES

1. Scope of Basic Services.

Architect's Basic Services consist of those described in Sections IV.A and IV.B of this Agreement, and include such structural, mechanical, electrical and plumbing and engineering services and such other design/engineering services that are normally and customarily required of projects similar in scope, size and complexity to the Project (the "Basic Services").

(a) *Cooperation.* Architect shall, during each phase of design referenced in this Article IV, submit to the Owner, Construction Manager, and such others designated by the Owner, "in process" plans, specifications and other documents, and shall meet with the Owner and Construction Manager to enable the Construction Manager to perform cost estimating, value engineering, constructability review and scheduling functions. Value engineering and suggestions that may reduce project cost or schedule will be considered and evaluated during all phases of the design process. Architect shall also meet, as necessary, with community groups and other Project stakeholders as required. Architect's Basic Services shall include all consultation and coordination contemplated by this section. Architect and the Owner agree to use their best efforts to fully communicate and cooperate with each other and with the Construction Manager.

(b) *Architect Assistance in Connection with Obtaining Financing for the Project.* Architect shall provide such assistance as the Owner may reasonably request in connection with obtaining financing for the Project. Architect agrees that it will make available to the Owner, its Lenders and any bond trustees, information relating to the Project, including information relating to the construction progress and expenditures, as any Lenders or bond trustees may reasonably request. Architect shall furnish such

consents to assignments and certifications addressed to the Owner, its Lenders and any bond trustees, as may be reasonably requested. Architect shall cooperate with the independent engineers, if any, of any Lenders or bond trustees.

(c) *Services.* Architect shall provide the following services in accordance with the Standard of Care during all phases of the Project:

(i) Furnish to the Owner and present all architectural and engineering data necessary for review and approval of applications to any Governmental Authority, insurance companies, league official, financial consultants or counsel.

(ii) Coordinate and hold meetings with the Owner, the Construction Manager, and any other parties the Owner identifies when required by the Owner or this Agreement during each phase of the Project through the Bidding and Negotiation Phase. Prepare minutes of all discussions and decisions from each meeting and disseminate to the working team for review and comment within three (3) business days. Assist the Construction Manager on construction meetings during the Construction Administration Phase of the Project.

(iii) Prepare graphic and narrative materials necessary for presentation to the Owner, governmental agencies and community groups.

(iv) Determine all Legal Requirements, comply with all Legal Requirements and assist the Owner in complying with all Legal Requirements. Architect will review the Design Documents with designated ADA “user” groups seeking input on areas of concern for any such group or groups.

(v) Prepare typical models, computer aided design renderings and graphics in 2-D and 3-D format to assist in the Owner’s complete understanding of the design concepts being advanced by Architect.

(vi) Prepare high-quality, special-purpose renderings to be used by the Owner for purposes of marketing the Project. The content and style of these renderings are to be approved by the Owner. These renderings are in addition to the design renderings and graphics required for design communication in subparagraph (v) above.

(vii) Architect shall, to the extent feasible, follow the sustainable building guidelines established under Minnesota Statutes section 16B.325.

(d) *Standards.* The Architect shall consider energy saving measures and techniques intended to result in cost efficiencies and effectiveness consistent with the standards and procedures for construction adopted by the University of Minnesota as set out in <http://www.cppm.umn.edu/standards.html>, and to discuss the implications of incorporating such measures with the Owner. To the extent the Parties agree that these measures or other measures as they may agree in writing will be incorporated into the design of the Project, such measures are referred to in this Agreement as the “Standards”.

The Architect shall review with the Owner and Construction Manager, as requested, alternative approaches to the design and the construction of the Project and will prepare such conceptual drawings as may be required.

(e) *Project Schedule.* Architect agrees to comply with those time parameters established for Architect's services as set forth in the Design Schedule and to work with the Owner and Construction Manager to develop a Project Schedule that is consistent with the Design Schedule and anticipated Construction Schedule. These times of performance of the Architect's Basic Services shall be extended due to delays caused by the Owner. The Owner agrees to give consideration to the Architect's request for extended time for delays caused by significant events outside of the Architect's reasonable control.

(f) *Construction Budget.* As requested by the Owner, Architect shall assist Construction Manager from time to time in providing estimates of Construction Cost for the Project based upon the current Design Documents prepared by Architect. Architect shall notify the Owner and Construction Manager in writing if it is aware of elements contained within the estimates of Construction Cost that do not comply with the Project requirements.

(g) *Coordination of Drawings.* Architect shall be responsible for the coordination of all drawings and Design Documents relating to Architect's design and use on the Project, regardless of whether such drawings and Design Documents are prepared or performed by Architect, by Subconsultants, or by others if Architect incorporates such work performed by others in the Design Documents. If preliminary or design development work has been performed by others, including the Owner, the Vikings, or any of the Subconsultants, Architect is nevertheless fully responsible for and accepts full responsibility for such earlier work when Architect performs subsequent phases of the Basic Services called for under this Agreement, as fully as if the preliminary, schematic and design development work had been performed by Architect itself. Architect shall be responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Architect. Architect shall be responsible for the completeness and accuracy of all Design Documents submitted by or through Architect.

## 2. Conceptual Design Phase.

The Architect will participate with and assist the Owner and Construction Manager, as required, in developing and refining the general concept for the Project described in Article I in accordance with the Design Schedule from time to time in effect.

(a) *Architectural Program Requirements.* The Architect will further define the Architectural Program based on in-depth interviews with the Owner, the Vikings, and other parties designated by the Owner. The Architect shall review its findings with the Owner and Construction Manager and update the Architectural Program based thereon. The Architectural Program shall set forth the Owner's design objectives,

constraints and criteria, including space requirements and relationships, flexibility and expandability, special systems and equipment, site requirements and other Owner requirements.

(b) *Design Concept Meetings.* Architect shall document the results of design concept meetings in which design factors are agreed to, modifications to previous designs are made and other material design and construction issues are discussed. Architect shall furnish a copy of the documentation produced under this section to each participant attending the design concept meeting, and to the Owner, the Vikings, and Construction Manager.

(c) *Conceptual Design Phase Services.* Architect will conduct the Conceptual Design analyses and tasks set out in Exhibit C and such other work as will define the scale and relationship of the Project components in a manner satisfactory to the Owner, assist the Owner and Construction Manager in preparing a preliminary Construction Budget, and prepare, for approval by the Owner and the Construction Manager, the Conceptual Design Documents.

### 3. Schematic Design Phase.

(a) *Schematic Design Meetings.* Architect shall document the results of schematic design meetings in which design factors are agreed to, modifications to previous designs are made and other material design and construction issues are discussed. Architect shall furnish a copy of the documentation produced under this section to each participant attending the schematic design meeting, and to the Owner, the Vikings, and Construction Manager.

(b) *Schematic Design Phase Services.* Architect will conduct the Schematic Design analyses and tasks set out in Exhibit C and such other work as will define the preliminary design of the various components of the Project in a manner satisfactory to the Owner, review with the Owner and Construction Manager, as requested, alternative approaches to design and construction of the Project, and prepare and produce for approval by Owner and Construction Manager such Schematic Design Documents as may be required.

(c) *Alternative Design Solutions.* Architect will participate in the Construction Manager's value engineering program during the Schematic Design Phase and incorporate changes in the Schematic Design Documents approved by the Owner.

(d) *Architect Review of Construction Cost.* Architect shall review and evaluate the estimates of Construction Cost prepared by Construction Manager during and at the completion of Schematic Design Phase. If the first meaningful estimate of Construction Cost exceeds the Construction Budget, either the Owner shall increase the Construction Budget or require Architect to revise the scope and quality of the Project so that the estimate of Construction Cost is within the Construction Budget. Architect shall make such revisions to the Schematic Design Documents without additional fee or expense to the Owner. Architect, after review of the estimate of Construction Cost, shall

also advise the Owner of any Project scope items that, in Architect's judgment, may have been in error or omitted from the estimate of Construction Cost prepared by Construction Manager.

4. Design Development Phase.

(a) *Design Development Documents.* Architect will not commence work on the Design Development Documents until: (i) the Owner has approved the Schematic Design Documents; (ii) there has been reconciliation between the most recent estimate of Construction Cost and the Construction Budget; and (iii) Architect has received the written direction of the Owner to commence such work. After the Owner has approved the general Project concept and Project program, the Architect shall prepare, for review and approval by the Owner, design development drawings and outline specifications adequate for obtaining preliminary cost and price estimates

(b) *Site Review.* In providing Basic Services hereunder, Architect is required to analyze all material aspects of the existing Site and Adjacent Property, and their respective utility systems and other infrastructure, including existing and publicly planned transportation systems, to evaluate whether the Architectural Program may be constructed and operated as described therein. Additionally, Architect will evaluate the water and sewer mains, natural gas and utility lines and all other systems which serve the Site, to the end that the plans and specifications provided by Architect, and the Project to be constructed will provide the Owner with finished product of an NFL stadium as described in the Architectural Program. Architect will take into consideration the existence of current and known future Site utilities so that the construction of the Project will attempt to minimize rerouting and removal of such utilities except as designated in the Design Documents.

(c) *Distribution of Design Development Documents.* At intervals appropriate to the progress of Design Development Documents and as mutually agreeable to by the Owner, Construction Manager and Architect, Architect shall provide drawings and other documents that depict the current status of development for the Owner's, and Construction Manager's information, review and comment.

(d) *Review of Budget.* Architect shall review, evaluate and discuss with the Owner and Construction Manager the estimate of Construction Cost prepared by Construction Manager relating to the Design Development Documents. As part of such review, Architect will evaluate whether Construction Manager's assumptions and take-offs appear to be reasonable, whether materials and systems appear to have been estimated in accordance with design intent and whether labor and unit pricing on elements of the Project are consistent with Architect's knowledge based on projects similar in scope, size and complexity. Architect shall participate in the Construction Manager's value engineering program during the Design Development Phase. Any revisions to the Design Development Documents shall be without additional fee to the Owner. Upon the conclusion of Architect's review process as described herein, Architect shall provide to the Owner a written evaluation of the estimate of Construction Cost.

Architect shall only make revisions to the scope of work characterized by the Design Development Documents with the Owner's written consent.

(e) *GMP and Construction Budget.* Architect understands that the Construction Budget constitutes a fixed limit of Construction Cost available for the Project if the Project is to be construed using a GMP approach. The GMP cannot exceed the Construction Budget, and, accordingly, Architect and the Owner shall use their best efforts to cooperate with each other and with the Construction Manager to achieve a GMP that complies with the Construction Budget and that contains the full Project program and scope. To that end, Architect shall, in cooperation with Construction Manager, propose to the Owner value engineering alternatives to cause the GMP to be within Construction Budget, and the Owner shall, in its sole discretion, either select the items to be incorporated into the Design Documents or increase the Construction Budget.

(f) *Review of General Conditions.* Architect shall review, evaluate and discuss with the Owner and Construction Manager the general and special conditions prepared by the Construction Manager for construction of the Project.

5. Construction Drawings and Specifications Phase.

(a) *Preparation of Construction Drawings and Specifications.* After the Owner has approved the Design Development Documents and the general Project concept and Project program, the Architect shall prepare, for review and approval by the Owner, in addition to the Design Development Documents discussed previously, a set of construction drawings and specifications, including "as-built" drawings in both a print and an electronic format, which are adequate for complete pricing and construction of the Project as designed (together with the Design Development Documents, the "Contract Documents"). Upon completion of the construction drawings and specifications, and prior to submitting such documents to the Owner and Construction Manager for issuance to contractors for prices and construction, the Architect shall check each such final construction drawing and specification with all other drawings and specifications for completeness and for freedom from conflicts, errors, omissions and ambiguities. The Construction Drawings and Specifications shall comply with Applicable Laws and the requirements of NFL and NFL Rules and Regulations.

The Contract Documents shall include all necessary drawings and calculations, details, plans, elevations, sections, and schedules, dimensioned, noted, and coordinated, as well as specifications, and the Architect shall seal and sign and cause its engineering Subconsultants to seal and sign the drawings and specifications as the architect and engineers of record.

Notwithstanding the fact that Architect will employ multiple Subconsultants pursuant to this Agreement to provide various portions of the design services, the Architect represents that it will provide the Owner with a complete and comprehensive design and corresponding Contract Documents for the entire Project.

(b) *Preparation and Submittal of Construction Drawings and Specifications.* Upon completion of the Construction Drawings and Specifications Phase,

Architect shall provide Construction Drawings and Specifications for the Owner's approval and Construction Manager's information. Construction Drawings and Specifications and other Contract Documents submitted by Architect to the Owner for approval or to any contractors, trade contractors, or subcontractors for bidding shall be prepared in accordance with the Standard of Care set forth herein. Architect shall inform the Owner of any tests, inspections, studies, analyses or reports that Architect deems necessary or advisable to be performed by or for the Owner in relation to such Construction Drawings and Specifications and other Contract Documents.

(i) Architect Services during this Phase shall include the following:

(1) Architect shall submit documents for review and/or approval to all Governmental Authorities having jurisdiction over the Project; Architect shall submit copies of all approvals obtained by Architect to the Owner. Architect will work with Construction Manager in determining any building or such other permits that are the Owner's responsibility for the Project. Architect shall prepare and submit the necessary forms and applications required and shall assemble the Contract Documents necessary to obtain such building or other permits and approvals. Architect shall also be responsible for promptly responding to requests for information and clarification from such Governmental Authorities as part of the applicable review and approval process and Contract Documents. Architect shall attend and participate, as appropriate, in all governmental or administrative hearings or meetings and other meetings in connection with this Section. Notwithstanding the foregoing, Architect shall not be responsible for obtaining or procuring subcontractor permits.

(2) Inclusion in the Construction Drawings and Specifications of the following documents in accordance with the Standard of Care set forth herein: (i) plans, elevations, and sections at a scale that is sufficient to give a reasonably clear understanding of the construction, dimensions thereof, materials to be employed, location of utilities and any other pertinent data, (ii) details, diagrams, schedules, photographic reproductions, and other pictorial methods appropriate to define work required to be performed to accomplish the purposes of the Project, and (iii) description of existing conditions of the Site, the Adjacent Property and structures with sufficient clarity to permit their use in the bidding and construction purposes of the process. Relevant design calculations, including those for structural, mechanical, electrical and plumbing work may be submitted separately for approvals or Construction Manager's information.

6. Bidding or Negotiation Phase.

(a) *Bidding Process.* Architect shall assist Construction Manager and the Owner in the preparation of the necessary bidding information and bidding forms for the Constructor and any trade contracts and subcontracts, and negotiation of any forms of agreement between the Owner and Constructor for the Project. Architect shall serve as the professional consultant and advisor to the Owner during the bidding process, including the preparation for and participation in all pre-bid conferences and pre-award conferences, and shall also evaluate any bidder voluntary alternates. At the Owner's direction, the Architect shall prepare detailed area calculations in a form acceptable to Owner.

(b) *Bid Packages; Bidding.* Architect acknowledges that this Project may be using multiple bid packages and that, accordingly, multiple trade contractors or subcontractors may be utilized. Due to the use of multiple and phased bid packages, the Construction Drawings and Specifications may require changes, refinement and detailing from time to time in order to coordinate among the various document issuances, and the cost of all such changes, refinement and detailing shall be included as a Basic Service.

(c) *Responses to Bidder Inquiries.* During the bidding period, Architect shall assist the Owner and Construction Manager in responding to bidder inquiries and Architect shall prepare and issue, in an expeditious manner so as not to cause an unnecessary delay in the bidding schedule, necessary addenda required to clarify, explain, modify or revise the Contract Documents..

(d) *Responses to Requests.* Architect shall prepare responses to questions, requests for clarification and information from prospective bidders and provide clarification and interpretations of the bidding documents as Architect deems appropriate by addenda.

(e) *Review of Bids.* Architect shall assist the Owner and Construction Manager in reviewing and analyzing construction bids.

(f) *Requests for Substitution.* Architect shall consider requests for Substitutions only if such Substitutions are: (a) permitted by the bidding documents, (b) proposed as alternates to specified items, and (c) such Substitutions provide a more economical solution, system or material without compromising quality or maintainability in the professional opinion of Architect. If such Substitution is approved by Architect and the Owner under the foregoing conditions, Architect shall prepare and submit to Construction Manager for distribution, addenda identifying approved Substitutions to all prospective bidders.

7. Construction Administration Phase.

(a) *Consultation and Site Visits.* During construction of the Project, the Architect shall advise and consult with the Owner and Construction Manager, as required. The Architect shall participate in construction conferences as required by Owner and Construction Manager and shall visit the site at intervals appropriate to the stage of

construction to become generally familiar with the progress and quality of the construction of the Project and to determine in general if the Work is proceeding in accordance with the Contract Documents.

(b) *RFIs.* The Architect shall review and respond to Constructor's requests for information (RFIs) in regards to questions the Constructor or its subcontractors have about the Contract Documents. The Architect adheres to the Owner's policies and procedures concerning RFIs.

(c) *Observations.* The Architect shall make on-site observations to check the quality of the Work and observe tests required by the Contract Documents and authorities having jurisdiction over the Project. On the basis of such on-site observations, the Architect shall keep the Owner and Construction Manager informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Constructor. A written report of each on-site observation will be promptly provided to the Owner and Construction Manager, and also to the Constructor, when requested by the Owner or Construction Manager. However, the Architect shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The Architect shall not be responsible for the Constructor's schedule or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Constructor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work, but Architect shall notify Owner and Construction Manager immediately upon discovering any acts or omissions by such parties that are not in conformance with the Contract Documents or which Architect believes violates any laws, rules, codes, ordinances or other regulations.

(d) *Progress Payments.* Based on the Architect's observations and evaluations of the Constructor's applications for payment, the Architect shall review and certify to the Owner, all payment requests by the Constructor and Subconsultants, in the form of Application and Certificate for Payment, AIA G702. Based on such observations at the site and on the Application and Certificate for Payment, the Architect shall determine the amount owing to the Constructor and Subconsultants and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site as provided in this Agreement and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents, correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Constructor is entitled to payment in the amount certified.

(e) *Shop Drawing Review and Approval.* The Architect shall review and approve, or take such other action as may be appropriate, within ten (10) working days (except as otherwise provided herein) of receipt (unless this time is extended by the Owner), all shop drawings, product data and samples to ascertain whether shop drawings and similar submittals are in accordance with the requirements of the Contract Documents and are consistent with, and adequate to secure execution of, the general design of the Project. The Architect shall participate in an expedited submittal process for the mechanical, electrical, plumbing (“MEP”) and building controls trades and conduct the submittal meetings associated with such expedited process.

(f) *Final Observation and Review.* The Architect shall review the Work to determine the date or dates of Substantial Completion and the date of Final Completion (as determined in the Contract Documents) and shall receive, review for compliance with the Contract Documents and forward to the Owner and Construction Manager for the Owner’s and Construction Manager’s review and records all written warranties and related documents required by the Contract Documents and assembled by the Constructor. Upon Substantial Completion (as determined in the Contract Documents), the Architect shall issue to the Owner and Construction Manager a certificate of substantial completion or the equivalent thereof pursuant to a Standard AIA certificate of substantial completion or in such other form as to which the Architect, the Owner and Construction Manager agree pursuant to a written agreement among them. The Architect shall prepare such punch lists and follow-up observations on the punch lists as may be required, shall conduct a final observation of the Project, and shall, if requested by the Owner or Construction Manager, prepare a final report in writing for the Owner. Upon completion of the Project, the Architect shall deliver to the Owner the “Architect’s Statement” in the form attached hereto as Exhibit O and Architect shall furnish Owner with one complete set of final Contract Documents.

(g) *Tests and Studies.* The Architect and/or its Subconsultants shall participate in, conduct and observe such tests as authorities having jurisdiction over the Project may require, provided that Owner shall bear all lab fees and expenses associated with such tests.

(h) *Constructor’s Cost Saving and Alternative Proposals.* The Architect shall review and evaluate cost saving proposals submitted by the Constructor, subcontractors and/or manufacturers and shall make such revisions to the Contract Documents as necessary to incorporate those cost saving proposals which are accepted by the Owner.

(i) *Change Orders.* The Architect shall prepare, upon request of the Owner, change orders and change order proposals, for review and approval by the Owner for execution in accordance with the Contract Documents.

8. Post-Construction Phase.

(a) The Architect shall consult with the Owner as necessary throughout the first year of the warranty period established under the Constructor's construction contract ("Warranty Period").

(b) The Architect shall coordinate with the Owner in conducting all remedial work during the Warranty Period.

(c) The Architect shall attend warranty inspections with the Owner and monitor follow-up warranty work or services by the Constructor during the Warranty Period provided, however, to the extent that such warranty inspections or follow-up work relates to services provided solely by Subconsultants, then Architect shall require each Subconsultant to perform the obligations set forth in this subparagraph 8 and will not be required to do so itself.

(d) The Architect and the Subconsultants shall participate in a program to critique the design and construction of the Project as reasonably requested by the Owner in writing.

9. General.

(a) *Certificates.* The Architect agrees to issue, upon the request of the Owner, all such certificates as may reasonably be required by the Owner, State of Minnesota Legislative oversight committee, or other parties identified by the Owner in connection with the construction or permanent financing for the Project. The Architect further agrees to consent to Owner's assignment of this Agreement as security for any construction financing for the Project, and to consent to any modifications to this Agreement which are reasonably requested by any Owner approved entity providing financing for the Project, provided such modifications do not materially alter the rights and obligations of the Architect.

(b) *Other Certificates.* The Architect agrees to issue, upon the request of the Owner, all such certificates and reports regarding the design or construction of any component of the Project, including certificates of occupancy, as may be required to satisfy the Owner's obligations to third parties and any Governmental Authorities having jurisdiction over the Project.

C. SUBCONSULTANTS AND OWNER'S CONSULTANTS

Subject to the terms and provisions of Article VIII and to the extent such specialties are not provided by Architect's own employees, the Architect shall retain design, structural, mechanical/electrical/plumbing, civil, acoustical, lighting, building controls, graphics, landscaping, glass and glazing, security, audio, video, roof mechanization, interior design, ADA, code compliance, vertical transportation, LEED and such other consultants, designers, architects, and independent contractors (all collectively referred to hereinafter as "Subconsultants" as listed in Exhibit I), other than Owner's Consultants, as may be necessary to accomplish the design and administration of the Project.

Owner's Consultants shall include testing, geotechnical, traffic, and environmental consultants, and other consultants providing services listed in Exhibit D, as retained and paid by the Owner. The Owner shall not be responsible for the accuracy, sufficiency or completeness of any information provided by Owner's Consultants, and Architect shall notify Owner if any additional testing or analysis by Owner's consultants is necessary or desirable in connection with the Project.

#### D. ADDITIONAL SERVICES

1. The Architect shall provide services in addition to those required by this Agreement ("Additional Services") as the Owner may reasonably request, including any services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice for Projects of similar scope. The Architect shall obtain the Owner's prior written approval before performing any Additional Services.

2. Additional Services include, but are not limited to:

(a) Making revisions in the Construction Drawings and Specifications and other documents when such revisions are inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or the Construction Budget, when due to changes required as a result of the Owner's failure to render decisions in a timely manner.

(b) Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Project Schedule, except for services required due to Architect's failure to comply with the information furnished by the Owner, Construction Manager or Constructor.

(c) Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

(d) Providing services made necessary by the default of the Constructor, by major defects or deficiencies in the Work of the Constructor, or by failure of performance of either the Owner or Constructor under the Owner's construction contract with the Constructor.

(e) Providing the Owner with assistance in any litigation brought against or by the Owner, against any parties other than the Architect or its Subconsultants, including the furnishing of documentation, expert testimony and the participation in pretrial discovery. Litigation assistance services of the Architect shall be furnished and compensated as Additional Services, except insofar as the Architect is required by legal process or subpoena by a third party to appear and give testimony.

(f) Providing financial feasibility or other special financial studies.

(g) Providing planning surveys, site evaluations or comparative studies of prospective sites.

(h) Providing special surveys and environmental studies required for approvals of Governmental Authorities or others having jurisdiction over the Project.

(i) Conducting inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

(j) Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing after the initial start-up and initial adjustments made in connection with the start-up, preparation of operation maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

(k) Providing services of consultants that are identified in this Agreement as the responsibility of Owner.

3. If the Construction Manager also acts as the Constructor, as opposed to serving only as an agent, then Architect specifically agrees to perform certain Additional Services on a lump-sum, fixed-price basis, as described in Exhibit H.

#### E. QUALIFICATIONS AND STAFFING

The Architect represents and acknowledges that it is knowledgeable of all codes, standards (including the Standards), rules and regulations applicable in the jurisdiction in which the Project is located, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, and by this representation agrees to comply with these codes, standards (including the Standards), rules and regulations. Should the Architect fail to comply with these applicable codes, standards (including the Standards), rules and regulations in accordance with the Standard of Care, as described in Section F below, the Architect hereby agrees to bear all additional costs incurred in securing compliance with such codes, standards, rules or regulations. However, in paying such additional costs, the Architect shall not be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project beyond that necessary to comply with such codes, standards (including the Standards), rules and regulations or which would have been a cost of the Project had such matters been considered initially.

The Architect represents that it is and all the Subconsultants are experienced and fully qualified to perform the Services contemplated by this Agreement, and that it is and all the Subconsultants are properly licensed pursuant to applicable law to perform such Services.

All staff used by the Architect in the performance of the Services shall be qualified by training and experience to perform their assigned tasks. The Architect shall submit, for the Owner's approval, a staffing proposal for the Project, complete with job description, names and previous experience of all design personnel. The Architect has designated the Principal, Project Architect, and Job Captain for the Project as stated in Exhibit F. The Principal, Project Architect, and Job Captain will not be reassigned without the Owner's approval and the Owner shall have the right to approve their successors. If, for the benefit of the Project, the Owner believes a change in the Architect's personnel assigned to the Project to be necessary, the Architect shall assign other employees acceptable to the Owner.

#### F. PERFORMANCE OF SERVICES AND STANDARD OF CARE

The Architect agrees that the Services rendered with respect to this Project will be in conformity with the Standard of Care. The Architect and Owner agree that the Standard of Care shall govern all Services to be provided by the Architect and the Subconsultants under this Agreement. Upon completion of the Project in accordance with the plans and specifications, the Architect agrees that the Project will be suitable for its intended purpose, as documented in the Project program, and subsequent directives, if any, from the Owner. The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Architect agrees with the Owner to use its best efforts, skill, judgment, and abilities to assist and work with the Owner and Construction Manager to design the Project, to produce the necessary Contract Documents, and to further the interests of the Owner in accordance with the Owner's requirements and procedures, each in accordance with professional standards applicable to the Architect and in compliance with all applicable restrictions, laws, codes, and regulations in effect throughout the period that the Architect is performing services under this Agreement. This Agreement represents the entire and integrated Agreement between the Architect and the Owner with respect to the Architect's Services, and supersedes all prior negotiations, representations or agreements, either written or oral.

Architect shall be aware of and advise the Owner as to the technological "state of the art" options for material portions of NFL stadium projects and shall advise the Owner of changes or advancements in such "state of the art" options throughout the Project. Architect shall actively advise the Owner from time to time as to material systems or components of the Project that are not, in Architect's opinion, "state of the art." The term "state of the art" shall mean current design trends and anticipated technological developments that are generally available within the Project time frame. Architect shall clearly identify, in writing, viable options for required decisions of the Owner and, in connection therewith, Architect shall recommend to the Owner Architect's opinion of the best applications for the Project, stating, in writing, the basis for those opinions.

Architect's duties as set forth herein shall at no time be in any way diminished by reason of any acceptance by the Owner of the Design Documents or any other work product of Architect, nor shall Architect be released from any liability by reason of such acceptance of the Owner.

#### G. AMENDMENT OF AGREEMENT

This Agreement may be amended only by written instrument signed by both Architect and Owner. It is binding upon the parties, their successors and assigns.

#### H. TIME OF PERFORMANCE

The Design Schedule included in the Project Schedule attached hereto as Exhibit B shall establish the times for performance of the Architect's Basic Services through the Conceptual Design Phase and Schematic Design Phase. If the Owner elects to continue this Agreement into the Design Development Phase and subsequent Phases, the Owner and Architect shall agree on a Design Schedule for such subsequent phases. These times of performance of the

Architect's Basic Services shall be extended due to delays caused by the Owner. The Owner agrees to give consideration to the Architect's request for extended time for delays caused by significant events outside of the Architect's reasonable control. Architect acknowledges the crucial aspect of timely submittal of the Project for Legislative Approval and subsequent completion of the Project, and represents that its Services shall be performed as expeditiously as possible consistent with the Standard of Care, the Design Schedule and the Construction Schedule. Architect shall provide all necessary personnel and supervision to achieve timely completion of each phase of its Services, and, subject to the other provisions of this section, shall comply with all completion schedules to which the Parties agree. The Owner may suspend the Architect's Services under this Agreement upon written notice to the Architect and the Architect agrees to resume Architect's Services in accordance with the terms of this Agreement upon receipt of Owner's notice to resume. Except during the period prior to Legislative Approval, if any such suspension shall exceed one hundred twenty (120) consecutive days, the Owner shall pay to the Architect reasonable compensation for the Architect's actual, increased costs as a result of such suspension.

## **I. AUTHORITY**

Architect shall have the authority to act on behalf of Owner only to the extent provided in this Agreement unless otherwise modified by a subsequent written instrument. Under no circumstances shall Architect contract, negotiate or make commitments with any governmental authorities with respect to the Project without the prior written consent of the Owner. Architect shall not order any corrective work to the Project without the Owner's prior written approval.

## **V. CONSTRUCTION COST**

### **A. RESPONSIBILITY FOR CONSTRUCTION COST**

#### **1. Review of Construction Budget; Construction Cost Estimates.**

Architect, as a design professional familiar with the construction industry and the design and construction of similar NFL stadiums in comparable urban areas, shall assist Construction Manager in evaluating the Construction Budget and shall review and accept or take exception to the estimates of Construction Cost prepared by Construction Manager during all phases of the Project. Architect's review of the Construction Budget and all estimates of Construction Cost prepared by Construction Manager will be utilized by Architect in preparing the Design Documents. However, Architect does not warrant the accuracy of the estimates of Construction Cost prepared by Construction Manager or represent that bids or negotiated prices will not vary from the Construction Budget proposed, established or approved by the Owner, or from the estimates of Construction Cost or other cost estimate or evaluation prepared by Construction Manager.

#### **2. Owner Options During Pre-Bidding Phases.**

Notwithstanding any other provision herein, in either or any of the Schematic Design, Design Development, or Construction Drawings and Specifications Phases, if the estimate of

Construction Cost prepared by Construction Manager exceeds the Construction Budget, then the Owner shall have the following options or combinations of options:

- (a) Request that Architect and Construction Manager review, evaluate and recommend options to bring the estimate of Construction Cost within the Construction Budget;
- (b) Require Architect to modify and revise applicable Design Documents;
- (c) Authorize an increase in the Construction Budget; or
- (d) Terminate this Agreement.

## **VI. COMPENSATION**

### **A. BASIC SERVICES**

The Architect shall receive as compensation for all Basic Services through and including the Conceptual Design Phase and the Schematic Design Phase, the fixed price sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable in response to monthly invoices based upon the amount of Basic Services actually performed actually incurred during such phases of the Architect's work.

The Architect shall receive as compensation for all Basic Services for the Design Development Phase, Construction Drawings and Specifications Phase, and Bidding or Negotiation Phase in the aggregate, a sum equal to \_\_\_\_\_ Percent (\_\_\_\_\_% ) of the Final Construction Cost, which sum will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable in response to monthly invoices based upon the amount of Basic Services actually performed during such phases of the Architect's work.

The Architect shall receive as compensation for all Basic Services for the Construction Administration Phase and Post-Construction Phase of the Architect's Work in the aggregate, a sum equal to \_\_\_\_\_ Percent (\_\_\_\_\_% ) of the Final Construction Cost, which sum will not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable in response to monthly invoices based upon the amount of Basic Services actually performed actually incurred during such phases of the Architect's work.

The Architect recognizes that the completion of the Design Services through the commencement of construction normally entails reasonable changes in the Construction Drawings and Specifications and other Contract Documents commensurate with the size and complexity of this Project, and that such reasonable changes or additions to the drawings and/or specifications are likely to occur during the course of the Services provided by the Architect under Article IV. The Architect therefore represents that its compensation for Basic Services includes such reasonable changes or additions to such Construction Drawings and Specifications and other Contract Documents during the course of both design and construction, and that such changes or additions shall entitle it to no additional compensation pursuant to Section VIV.D of this Agreement.

## B. SAVINGS INCENTIVE

If the Final Construction Budget is less than \$[\_\_\_\_\_ Million] (the “SI-Base Amount”), then Architect will receive an additional payment equal to the product of (1) \_\_\_\_\_ Percent (\_\_\_\_%) multiplied by (2) the difference between the SI-Base Amount and the Final Construction Budget. This amount shall be paid within 60 days following Substantial Completion of the Project.

If the Final Construction Budget exceeds the SI-Base Amount, then Architect will not receive an additional payment, and instead the Architect’s overall payments will be reduced by an amount (the “Reduction Amount”) equal to the product of (1) \_\_\_\_\_ Percent (\_\_\_\_ %) multiplied by (2) the difference between the Final Construction Budget and the SI-Base Amount. This Reduction Amount will be withheld from the Architect’s compensation for all Basic Services for the Construction Administration Phase and Post-Construction Phase of the Architect’s Work on a pro rata basis. If there are any changes to the Work that the Owner contends are required to address acts or omissions of the Architect, the Reduction Amount for such changes will be retained by Owner pending final determination of the Architect’s responsibility therefor.

## C. ADDITIONAL SERVICES

Except as otherwise agreed upon in this Agreement, the Architect shall receive compensation for Additional Services, if any, at a fixed hourly rate for the Architect’s personnel plus agreed expenses incurred specifically as a result of such Additional Services. For purposes of computing these rates, the hourly rates for all employees’ time are listed in attached Exhibit G.

If the Owner or Construction Manager requests, the Architect shall, prior to engaging in any Additional Services, submit a proposal in a form acceptable to the Owner for performance of such specific Additional Services on a lump-sum, fixed-price basis. When the Architect and Owner agree to such proposal, then such Additional Services shall be performed on a fixed-price basis under this paragraph, notwithstanding any other provisions of this Article VI.

If the Construction Manager also acts as the Constructor, as opposed to serving only as an agent, then Architect specifically agrees to perform certain Additional Services on a lump-sum, fixed-price basis as specified in Exhibit H.

All Additional Services will payable in response to monthly invoices based upon the amount of Additional Services actually performed. In connection with invoices for payment for Additional Services which are furnished on an hourly rate plus agreed expense basis, the Architect agrees to keep, on the basis of generally accepted accounting principles, financial records which shall be made available for review by the Owner within ten (10) working days of the receipt of a written request from the Owner.

#### D. REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the compensation for Basic Services and Additional Services, and include out-of-pocket expenses incurred by the Architect and its employees and consultants in the interest of the Project as identified as follows:

1. Expense of transportation in connection with the Project (not to exceed round-trip coach airfare and automobile mileage at the maximum rate allowed by IRS regulations); reasonable living expenses in connection with domestic out-of-town travel.
2. Expense of long distance communications, postage, express delivery and handling of drawings, specifications, and other documents.
3. Expense of data processing and photographic production techniques.
4. Expense of reproductions including without limitation:
  - (a) Costs associated with the reproduction of design documentation through the course of the Project, including the cost of printing drawings and specifications for inter-discipline coordination and the use of the Owner and Construction Manager.
  - (b) Printing required by the Owner, Construction Manager and other parties for the purpose of reviews, coordination and approvals of any Contract Document.
  - (c) Providing to the Constructor at the end of the Construction Drawings and Specifications phase, two hard copies and one electronic copy of the Construction Drawings and Specifications and other Contract Documents.
  - (d) Providing the same to the Constructor with each update to the Construction Drawings and Specifications and other Contract Documents issued by the Owner.
  - (e) Printing associated with City/local authority drawing reviews.
  - (f) Printing associated with the signed/sealed permit drawings as required.
  - (g) Printing associated with bidding for the Constructor and subcontractors, and for the Constructor's use during construction.
4. Expense of renderings, models, mock-ups and other study models and graphic representations approved by Owner for Architect to design the Project and to present the design to Owner.
5. Testing of any kind.

6. Professional photography requested in writing by the Owner. However Architect's photos taken during the Construction phases of the project will be made available to the Owner and Construction Manager on request.

All Reimbursable Expenses will payable in response to monthly invoices based upon the amount of Reimbursable Expenses actually incurred. In connection with invoices for payment for Reimbursable Expenses, the Architect agrees to keep, on the basis of generally accepted accounting principles, financial records which shall be made available for review by the Owner within ten (10) working days of the receipt of a written request from the Owner.

#### E. PAYMENTS

The Architect shall submit to the Owner on or before the tenth (10<sup>th</sup>) day of each calendar month a detailed monthly invoice in such form and supported by such documents as the Owner may reasonably require. Said monthly invoices are anticipated to be in accordance with Exhibit E. After timely receipt and approval by the Owner of the Architect's request for payment as herein required, the Owner will make payment to the Architect by the tenth (10<sup>th</sup>) day of the following calendar month.

### VII. OWNER'S AND CONSTRUCTION MANAGER'S PARTICIPATION

#### A. GENERAL

The Architect understands and agrees that the Owner, Construction Manager and other parties designated by Owner intend, through their designated representative or representatives, to actively participate both in the evolution of the design for the Project, in interaction and consultation with other Subconsultants and Owner's Consultants and in construction administration of the Project. The Architect expressly acknowledges that it is an independent contractor, that it is not the representative or agent of the Owner, and that the Owner's and Construction Manager's participation, through their representatives shall in no way relieve the Architect of its professional duties and responsibilities under applicable law and this Agreement.

The Owner and Construction Manager will assist the Architect in developing the Project concept and the Project program. The Owner will furnish a legal description and a certified land survey of the site, as may be needed, and available information concerning the location of service and utility lines, above and below grade.

#### B. REPRESENTATIVES

##### 1. Owner Representative

The Owner has designated its Executive Director as its agent and representative authorized to act on the Owner's behalf with respect to the Project ("Owner Representative"). The Owner reserves the right to change its representative, and the Owner shall notify the Architect and Construction Manager in writing prior to such change. The Owner Representative is the Owner's exclusive representative to the Architect insofar as this Agreement is concerned. All instructions from the Owner to the Architect relating to this Agreement shall be issued or made in writing through the Owner Representative. All communications and submittals from the

Architect to the Owner with respect to matters covered by this Agreement shall be issued or made through the Owner Representative, unless the Owner or the Owner Representative shall otherwise direct in writing.

The Owner will designate, when necessary, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner, or such representative as may be authorized, shall examine the documents submitted by the Architect and will render decisions pertaining thereto as promptly in accordance with the Design Schedule as reasonably appropriate under the circumstances.

## 2. Construction Manager Representative

The Owner will require that Construction Manager designate, when necessary, a representative authorized to act on the Construction Manager's behalf with respect to the Project.

## **VIII. SUBCONSULTANTS**

### **A. SELECTION AND RETENTION OF SUBCONSULTANTS**

Prior to the award of any Subconsultant subcontract, the Architect shall consult with the Owner and Construction Manager and shall submit the name of the proposed Subconsultant and proposed subcontract form to the Owner and Construction Manager for approval. The Owner reserves the right to disapprove any proposed Subconsultant for any reason. Copies of executed Subconsultant subcontracts shall be provided to Owner and Construction Manager.

The Architect shall bind each and every Subconsultant to the terms stated herein and shall require that all persons rendering Services under this Agreement are properly licensed to provide such Services in the locale in which the Project is located.

The Architect hereby agrees to include a provision in all subcontracts issued for Services hereunder allowing the Architect to assign said subcontract to the Owner or Owner's designee without the Subconsultant's consent. The Architect shall require all Subconsultants to include a similar assignment provision in each and every subcontract Subconsultant issues for Services hereunder.

The Architect agrees that it shall be solely and completely responsible for the performance of the Subconsultants. The Architect hereby affirms that it will be fully responsible for the acts, errors and omissions of its Subconsultants and shall to the fullest extent permitted by law fully indemnify, defend, and save harmless the Owner, Construction Manager, their shareholders, directors, officers, agents, employees, and assigns from any and all claims, liabilities, suits, damages and losses which arise on account of services rendered by the Subconsultants.

The Architect shall coordinate its Services with the Work of the Owner's separate contractors and consultants, including the Owner's Consultants and Constructor and all other Consultants and with the Owner and Construction Manager. The Owner will provide information generated by Owner's separate contractors and consultants, including the Owner's

Consultants, to the Architect, but will not guaranty the accuracy, sufficiency or completeness of the Owner's Consultants Services.

## **B. COMPENSATION OF SUBCONSULTANTS**

The Architect shall be responsible for and shall include in its fixed price or agreed percentage of Construction Cost for professional services to be performed under this Agreement, the cost of the services of all Subconsultants retained by the Architect with the approval of the Owner as may be necessary to accomplish the design and construction services herein, and compensation for the services to be provided by the Subconsultants shall be included in the fee charged for Basic Services by the Architect under Article VI, Compensation.

The Architect shall pay each of the Subconsultants within ten (10) days (or such shorter period as required by law) of the Architect's receipt of payment from the Owner for undisputed services provided by each of the Subconsultants. The Architect shall pay interest of 1-1/2 percent per month (or any part of a month) to any of the Subconsultants on an undisputed amount not paid on time to the Architect's Subconsultant. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Architect shall pay the actual penalty due to the Subconsultant in accordance with Minnesota Statutes.

## **IX. OWNERSHIP OF DOCUMENTS**

Architect hereby grants the Owner, Construction Manager and all contractors, subcontractors, suppliers and consultants retained in connection with the Project an unrestricted license and right of use of all designs, drawings, specifications, models, renderings and work product prepared in connection with the Project, including all patents, copyrights, trademarks, service marks and other intellectual property rights limited to the Project, but only for the limited purpose of constructing and promoting the Project. Upon termination of this Agreement by the Owner pursuant to Article XII or, in any event upon payment by Owner to the Architect of all sums due hereunder, all drawings, specifications, models, renderings and work product prepared in connection with the Project, including all patents, copyrights, trademarks, service marks and other intellectual property rights limited to the Project, shall become the property of the Owner and each contract with each of the Subconsultants shall reflect this provision. The Architect shall deliver all such drawings, specifications, models, renderings and work product to the Owner if requested and the Architect agrees to make no further use thereof, except for such drawings, specifications, and products of service which are proprietary to the Architect or its Subconsultants or which are general in nature. Nevertheless, it is understood by the Owner that all such drawings, specifications, models, renderings and work product may be inappropriate for use in the construction of any other project. Therefore, the Architect shall not be responsible for the use or workability of such drawings, specifications, models, renderings and work product in connection with any project other than the project for which they were specifically prepared.

The obligations of the Architect under this section will be performed by Architect, and the licenses, rights of use, ownership, and other benefits received or to be received by Owner under this section will be received by Owner, at no additional compensation to Architect other than the agreed fee charged for Basic Services by the Architect under Article VI, Compensation.

## **X. INDEMNIFICATION**

The Architect shall be responsible for and shall to the fullest extent permitted by law indemnify the Owner, Construction Manager and Vikings against any and all losses to the extent arising out of any acts, errors or omissions of Architect or those of its agents, employees, or Subconsultants, in connection with the performance of the Services under this Agreement, and will be responsible for all costs, losses, damages, or expenses (including attorney fees and other reasonable costs of defense) arising out of such losses.

Architect shall to the fullest extent permitted by law indemnify and save harmless the Owner, Construction Manager and Vikings, and all of their representatives, partners, and lenders, from any suits, actions, or claims and from any resulting costs, damages, liens, judgments, expenses, or losses (including attorney fees and other reasonable costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right by Architect or any of its Subconsultants or their employees, agents, or representatives, or anyone for whose acts Architect may be liable.

The Architect shall to the fullest extent permitted by law indemnify and save harmless the Owner, Construction Manager and Vikings, and all of their representatives, partners, and lenders, from any suits, actions, or claims and from any resulting costs, damages, liens, judgments, expenses, or losses (including attorney fees and other reasonable costs of defense), arising out of injuries or damage sustained by persons or property to the extent caused by any acts, errors or omissions of the Architect or any of its Subconsultants or their employees, agents, or representatives, or anyone for whose acts Architect may be liable. The Architect shall require each Subconsultant to include these same indemnification provisions in their contracts with the Architect.

The terms and provisions of this Article X shall survive the expiration or termination of this Agreement.

## **XI. INSURANCE**

### **A. ARCHITECT'S INSURANCE**

Architect shall procure and maintain, at its own cost, with companies authorized to do business in Minnesota or otherwise acceptable to the Owner, the insurance outlined herein for coverages at not less than the prescribed minimum liability limits for claims caused or contributed to by Architect. The insurance coverages and liability limits to be provided by Architect shall be described below.

### **B. PROFESSIONAL LIABILITY INSURANCE**

Architect, at Architect's sole cost and expense, shall purchase and maintain insurance to protect against claims arising out of the performance of Architect's Services for the Project caused by any errors, omissions or acts for which Architect is legally liable. Such professional liability insurance shall have minimum limits of Ten Million Dollars (\$10,000,000) per claim and a per claim deductible not in excess of Two Hundred Fifty Thousand Dollars (\$250,000). Architect shall keep such insurance in effect for a period of not less than six (6)

years after the date of completion of its Services for the Project. If such professional liability insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date of this Agreement and shall include a supplemental extended reporting period provision. The policy shall allow for circumstance reporting.

The Architect shall require that all Subconsultants maintain professional liability insurance in the amounts set forth in Exhibit J or in such lesser amounts that are reasonably acceptable to Owner and Architect and in accordance with the terms and conditions of this Section B, and that all Subconsultants comply with all other provisions of this Article XI.

Architect, at Architect's sole cost and expense, shall purchase and maintain Project Errors and Omissions insurance to protect against claims arising out of the performance of Architect's Services and the services of the Construction Manager and Subconsultants for the Project caused by any errors, omissions or acts for which any of the Architect, the Construction Manager, or the Subconsultants is legally liable. Such professional liability insurance shall have minimum limits of Ten Million Dollars (\$10,000,000) per claim and a per claim deductible not in excess of Two Hundred Fifty Thousand Dollars (\$250,000). Architect shall keep such insurance in effect for a period of not less than six (6) years after the date of completion of its Services for the Project. If such professional liability insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date of this Agreement and shall include a supplemental extended reporting period provision. The policy shall allow for circumstance reporting.

#### C. WORKER'S COMPENSATION, LIABILITY AND VALUABLE PAPERS INSURANCE

During the entire term that this Agreement shall remain in effect, the Architect and the Subconsultants, each at its sole cost and expense, shall obtain and maintain the following insurances in not less than the following amounts:

1. Workers' Compensation insurance in amounts as required by statute.
2. Employers' Liability insurance in an amount not less than \$1,000,000 for bodily injury each accident; \$1,000,000 for Bodily Injury by Disease for Each Employee; and \$1,000,000 for Bodily Injury Disease Aggregate.
3. Commercial General Liability insurance on an occurrence basis in an amount of not less than \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage. Such Commercial General Liability insurance shall include, but not be limited to, the following coverages:
  - Blanket contractual coverage;
  - Personal and advertising injury;
  - Independent contractors;
  - Explosion, collapse and underground hazards (x, c, u) included.

4. Automobile Liability Insurance.

Architect will maintain Primary Automobile Liability Insurance, covering all owned, non-owned, hired, leased and/or borrowed vehicles. Such insurance shall have limits of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

5. Valuable Papers insurance to protect against destruction of valuable papers and records on an all-risk basis for the full replacement cost thereof.

6. Umbrella/Excess Liability Insurance.

Architect will maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described above which is at least as broad as each area of the underlying policies. Such umbrella/excess insurance shall have a combined single limit and aggregate limit of not less than \$8,000,000. The amounts of insurance required above may be satisfied by Architect purchasing coverage for the limits specified or by any combination underlying and umbrella limits so long as the total amount of insurance is not less than the limits specified above when added to the umbrella a/excess limit specified herein.

The Subconsultants shall maintain coverage limits in amounts reasonably acceptable to the Owner.

D. OTHER INSURANCE REQUIREMENTS

The insurance policies required in the above sub-paragraphs 3) and 4) of Section XI.C shall name the Owner and the Construction Manager as additional insureds and shall be endorsed to be primary and non-contributory with any insurance otherwise carried by Owner or Construction Manager. All insurance required hereunder a) shall be written with insurers authorized to do business in the State of Minnesota and rated A- IX by AM Best & Co.; b) shall provide to Owner and Construction Manager 90 days advance written notice of reduction, cancellation or non- renewal and; c) shall waive all rights of subrogation against Owner and Construction Manager.

E. CERTIFICATES OF INSURANCE

Prior to the commencement of work relative to this Agreement and upon the renewal of any of the insurance policies required hereunder, the Architect shall furnish certificates of insurance to Owner, Construction Manager and Vikings as evidence of the insurance and conditions required in Sections XI.A, XI.B, and XI.C. Architect shall provide the Owner, the Construction Manager and the Vikings with certificates of insurance on an ACORD form, completed by a duly authorized representative evidencing that at least the minimum coverages required here are in effect and specifying that the liability coverages (except professional liability) are written on an occurrence form. The Architect will declare on the Certificate of Insurance whether the policies have a deductible or self-insured retention and, if there is a self-insured retention, the amount of such self-insured retention.

1. Failure of the Owner or its designated representative to demand such a certificate or other evidence of full compliance with these requirements or failure of the

Owner or its designated representative to identify a deficiency from evidence provided will not be construed as a waiver of Architect's obligation to maintain such insurance.

2. The acceptance of delivery by the Owner or its designated representative of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by the Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements.

3. The Owner will have the right, but not the obligation, of prohibiting Architect or any Subconsultants or professional subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Owner.

4. If Architect fails to maintain the insurance as set forth here, the Owner will have the right but not the obligation, to purchase said insurance at Architect's expense. Alternatively, Architect's failure to maintain the required insurance may result in termination of this contract at the Owner's option.

5. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverages will be submitted with Architect's final invoice.

#### F. POLICIES

All insurance will be provided through companies authorized to do business in the State of Minnesota and considered acceptable by the Owner. Certified copies of all insurance policies required will be provided to the Owner within ten (10) days of the Owner's written request of those copies.

#### G. INSURANCE PRIMARY

All coverages required of Architect or Subconsultants or professional subcontractors will be primary over any insurance or self-insurance program carried by the Owner, the Construction Manager or the Vikings.

#### H. NO REDUCTION OR LIMIT OF OBLIGATION

By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect Architect. Insurance effected or procured by Architect will not reduce or limit Architect's contractual obligations described herein to the Owner for claims or suits which result from or are connected with the performance of this Contract.

#### I. ADDITIONAL INSURED

To the extent commercially available, policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, shall include the Owner, the Construction Manager and the Vikings and their respective employees and

officers as additional insureds on a primary basis for work performed under or incidental to this contract. The form of the additional insured endorsement will be ISO CG 20 10 11 85 (Form B) or its equivalent. If the additional insured has other insurance applicable to the loss it will be on an excess or contingent basis. The amount of Architect's insurance will not be reduced by evidence of such other insurance.

#### J. DURATION OF COVERAGE

All required coverages will be maintained without interruption during the entire term of this Agreement.

#### K. RETROACTIVE DATE AND EXTENDED REPORTING PERIOD

If any insurance required here it to be issued or renewed on a claims - made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the Project and will state that in the event of cancellation or non-renewal, Architect shall procure tail coverage for at least thirty-six (36) months.

#### L. COOPERATION

Architect and the Owner agree to fully cooperate, participate and comply with all reasonable requirements and recommendations of the insurers and insurance brokers issuing or arranging for issuance of policies required here, in all areas of safety, insurance program administration, claim reporting and investigating and audit procedures.

### **XII. TERMINATION**

The Owner may, upon seven (7) days' written notice, terminate the Architect's Services under this Agreement for its convenience and without cause, in which case the Architect shall be entitled to that compensation earned under Article III of this Agreement for (i) Basic Services performed through the date of termination, (ii) Additional Services performed through the date of termination with prior approval by Owner in accordance with the schedules of fees and expenses for such Additional Services and (iii) Reimbursable Expenses incurred through the date of termination. Payments for such Basic Services, Additional Services and Reimbursable Expenses shall be made in accordance with the provisions of Section VI.D above following the Owner's receipt of all drawings, specifications, models, renderings and all other work product pursuant to Article IX above. In the event of such termination, Architect will not be entitled to any lost profits, damages, termination expenses, or any other compensation except as specifically provided above in this Article.

The Architect may suspend performance of Services under this Agreement upon not less than ten business days' notice to Owner in the event Owner fails to make an undisputed payment under this Agreement that is properly due and payable to the Architect unless such undisputed payments are made prior to expiry of such notice period.

This Agreement may be terminated by either party upon not less than 30 days' prior written notice should the other party fail to make an undisputed payment under this Agreement and such undisputed payment is not made prior to the expiry of such notice period or should the

other party fail substantially to perform its obligations in conformance with the terms of this Agreement through no fault of the party initiating the termination and shall fail to cure such default prior to expiry of such notice period. Any notice of default shall state in reasonable detail the nature of the alleged default.

### **XIII. ASSIGNMENT**

The Owner may sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or a portion of the Project or its rights under this Agreement in its sole discretion, without the consent of the Architect, so long as (a) the rights and obligations of the Owner under this Agreement are assigned in connection therewith, (b) all payments due Architect under Article VI have been paid current, and (c) the proposed transferee of Owner is of good reputation and has adequate financial resources. The Architect shall execute all consents reasonably required to facilitate such assignment. The Architect may not assign this Agreement or any of its obligations to perform under this Agreement without the express written consent of the Owner.

### **XIV. DISPUTE RESOLUTION**

#### **A. DISPUTE RESOLUTION PROCEDURES**

Any claims brought under this Agreement shall be subject to the dispute resolution procedures set forth in Exhibit L attached hereto, including the on-site, expedited alternative dispute resolution process set forth therein. Failure of either Party to comply with the provisions of the ADR Procedures shall be in contravention of the Parties' express intention to implement this alternative means of dispute resolution and shall constitute a waiver by such Party of any claim with respect to which it fails to comply with the provisions of the ADR Procedures in any material respect.

#### **B. CONTINUED PERFORMANCE**

In the event of any dispute arising by or between the Parties, each Party shall continue to perform as required under the Contract Documents notwithstanding the existence of such dispute. In the event of such a dispute, the Owner shall continue to pay Architect as provided in the Contract Documents, except only such amount as may be disputed.

#### **C. PREVAILING PARTY**

In the event of any dispute between the Parties, the prevailing Party shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or other amounts to which it may be entitled; provided, however, a plaintiff shall not be a prevailing Party unless it is awarded a judgment which exceeds the last written offer of settlement from the other Party.

### **XV. NO WAIVER**

No failure or delay of a party in the exercise of any right given to such party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a party of any breach

of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

#### **XVI. EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended by written instrument signed by both parties hereto.

#### **XVII. APPLICABLE LAW AND VENUE**

This Agreement shall be construed in accordance with the laws of the State of Minnesota. Each party to this Agreement (a) agrees that any suit, action or other legal proceeding arising out of this Agreement or any related agreements or any of the transactions contemplated hereby or thereby shall be brought in the courts of record of the State of Minnesota or the courts of the United States located in Minnesota; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts.

#### **XVIII. NOTICES**

A. Any notice provided for in or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service. If notice is deposited in the United States mail pursuant to clause (ii) of this Article, it will be effective from and after the day it is received by the addressee or receipt thereof is refused by the addressee, unless such day is not a business day, and then it shall be deemed received on the next business day. Notice given in any other manner shall be effective only if and when received by the party to be notified unless the day it is received is not a business day, and then it shall be deemed received on the next business day. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided, as follows:

If to Owner, to: Metropolitan Sports Facilities Commission  
900 South Fifth Street  
Minneapolis, MN 55415  
Attention: Executive Director  
Fax No.: 612-332-8334

with a copy to: McGrann Shea Anderson Carnival Straughn & Lamb,  
Chartered  
800 Nicollet Mall, Suite 2600  
Minneapolis, MN 55402-7035

Attention: Kathleen M. Lamb  
Fax No.: 612-339-2386

If to Architect, to: [Architect]  
[Address]  
Attention:  
Fax No.:

with a copy to: [Recipient]  
[Address]  
Attention:  
Fax No.:

If to Vikings, to: Minnesota Vikings, LLC  
9520 Viking Drive  
Eden Prairie, MN 55344  
Attention:  
Fax No.: 952-828-6514

B. Each party shall have the right from time to time and at any time to change its respective address and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party. Each party shall have the right from time to time to specify additional parties to whom notice hereunder must be given by delivering to the other party fifteen (15) days' written notice thereof setting forth the address of such additional party or parties; provided, however, that no party shall have the right to designate more than three (3) such additional parties. Notice required to be delivered hereunder to either party shall not be deemed to be effective until the additional parties, if any, designated by such party have been given notice in a manner deemed effective pursuant to the terms of this Article XVIII.

## **XIX. AUDIT**

Owner reserves the right to request supporting documentation for all amounts charged to Owner. The Architect shall maintain cost accounting records relating to the performance of this Agreement in accordance with generally accepted accounting practices. The Owner shall have the right to inspect and copy all books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of the Architect, its agents, and Subconsultants. The Architect shall make such items available for inspection during normal business hours at the Architect's place of business. All such items shall be retained by the Architect during the term of this Agreement and for a period of three (3) years after final acceptance. Owner reserves the right to audit any other supporting evidence necessary to substantiate charges related to this Agreement, both direct and indirect costs, including overhead allocations as they may apply to costs associated with this Agreement. If requested by Owner or

Construction Manager, Architect will provide supporting records in a computer readable format as well as a hard copy.

The Owner shall have the right to adjust the Agreement price for the failure or refusal of the Architect to provide access to such records. Computational or clerical errors made by the Architect in the preparation of an invoice, final payment or change order shall be corrected as follows: The Owner or Architect will advise the other of any such finding. If the error favors the Architect, the Owner will issue a modification correcting the error and reimburse the Architect for the error. If the error favors the Owner, the Architect shall make an adjustment on the next due progress payment statement, identifying the change order and deducting the amount of the overpayment. If final payment has been made, the Architect shall make payment in response to a formal demand issued by the Owner.

## **XX. ADA COMPLIANCE**

The Architect agrees that the design of all improvements shall be in compliance with the current understanding and interpretation of the Americans with Disabilities Act Guidelines, Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped.

## **XXI. CONFIDENTIALITY**

Architect shall not use or disclose and shall not permit others to use or disclose Confidential Information without prior written approval of the Owner, Construction Manager or Vikings. Architect may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the following conditions: (1) the employees have each agreed in writing to Architect's obligations under this Article XXI, and (2) Architect has provided the original written agreement to the Owner, Construction Manager and Vikings.

"Confidential Information" means all knowledge, information, data, materials, and trade secrets of the Owner, Construction Manager and Vikings gained, obtained, derived, produced, generated or otherwise acquired by Architect and its agents, employees, contractors and Subconsultants with respect to the Project. "Confidential Information" shall not include any information (1) that is or becomes publicly available without a breach of this Agreement or (2) that Architect can show (by contemporaneous written records) Architect had in its possession before beginning the Project and before disclosure by Owner, Construction Manager or Vikings.

Architect and its employees, agents, contractors and Subconsultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the prior written approval of the Owner, Construction Manager and Vikings.

Architect agrees that the Confidential Information constitutes valuable trade secrets of the Owner, Construction Manager or Vikings and that money damages cannot fully remedy any breach of this Article XXI. Architect agrees that the Owner, Construction Manager or Vikings may obtain an injunction to prevent or enjoin any breach of the obligations of this Article XXI.

## **XXII. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION**

The Architect shall not discriminate against any of its subcontractors, employees or applicants for employment or subcontracting because of race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, status as a Vietnam veteran or a veteran with a disability, or sexual orientation.

The Architect agrees to abide by the equal opportunity and affirmative action provisions set forth in this Article XXII and in Exhibit M, which is incorporated into this Article XXII by reference. Architect agrees to complete the State of Minnesota – Affirmative Action Data Page attached as Exhibit N, and to provide documentation of compliance if necessary.

The Architect hereby agrees to include the provisions of this Article XXII in all subcontracts issued for Services hereunder, as modified in such subcontracts to reflect that the Subconsultants and other parties in such subcontracts are subject to the same equal opportunity and affirmative action obligations to which the Architect is subject under this Article. The Architect shall require all of the foregoing Subconsultants and other parties to include the same, modified equal opportunity and affirmative action obligation provisions in each and every subcontract that Subconsultants and other parties issue for Services hereunder.

## **XXIII. OWNER IMMUNITY AND LIMITATIONS ON LIABILITY**

Nothing contained in this Agreement, including but not limited to any insurance required under this Agreement or otherwise carried by Owner, shall in any way affect or impair the Owner's immunity or the immunity of the Owner's employees or consultants or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing contained in this Agreement, including but not limited to any insurance required under this Agreement or otherwise carried by Owner shall in any way affect or impair the limitations on the Owner's liability or the liability of the Owner's employees or consultants or independent contractors, set forth in Minnesota Statutes Chapter 466. By entering into this Agreement, the Owner does not waive any rights, protections or limitations provided for the Owner or its employees or consultants or independent contractors under the various rules of governmental immunity or under Minnesota Statutes Chapter 466.

IN WITNESS WHEREOF, this Agreement has been executed to be effective as of the day and year first above written.

**OWNER:**

**METROPOLITAN SPORTS FACILITIES  
COMMISSION**

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Chair

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Executive Director

**ARCHITECT:**

**[ARCHITECT]**

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(Title)

## **EXHIBIT A**

### **ARCHITECTURAL PROGRAM**

Programmatic design elements and work that will be analyzed for the Owner include:

- Ability to meet or exceed the requirements for a National Football League Franchise and a Super Bowl event.
- Ability to be multipurpose and be utilized for the following events
  - NCAA Men's or Women's Championship Basketball
  - Professional or amateur soccer
  - Motorsports events
  - Trade shows, community, or cultural events
  - Amateur baseball
  - Other national or international events
- Climate controlled facility with a retractable roof
- It is the desire of the Owner to evaluate whether any existing structure, systems, or equipment can be reused and retained for the reconstruction of a stadium. The architect shall review and determine to what extent necessary demolition must occur to the HHH Metrodome as part of the reconstruction.
- Develop a sustainable design that achieves LEED certification if constructed

Programmatic design elements must meet or exceed the requirements of the National Football League. The following programmatic design elements have been provided by the Vikings:

- 65,000 seats expandable to 72,000 seats for a Super Bowl
- Seating that meets all current ADA requirements
- 7,500 club seats (included in above seat count)
- 150 private suites. Suites to have size, capacity, and amenities of comparable NFL facilities
- 1155 car parking structure onsite as part of a 2500 parking spot requirement adjacent to the stadium
- Vikings Hall of Fame area
- Vikings team store
- State of the art audio and high definition video systems
- Restroom facilities which meet or exceed current stadium designs especially for women and families
- Compliance with all relevant codes including storm water management
- Increased numbers and improved means of vertical transportation within the facility including passenger elevators and escalators
- Loading dock and television truck areas (Minimum 60,000 sq. ft.)
- State of the art team locker and training facilities for game day
- Player and coaching staff family waiting areas
- Building Size approximately 1.6 million square feet

- Security elements and building setbacks consistent with current NFL and State of Minnesota requirements
- Exterior fan plaza areas for pregame production elements
- Club and restaurant opportunities within the stadium
- Concessions points of sale consistent with current NFL stadium design as well as necessary back of the house work areas.
- Additional office spaces for the Vikings and Owner including but not limited to ticketing, sales and marketing, conference room, concessionaire office, employee locker, and all other necessary spaces as usual and normal

**EXHIBIT B**  
**PRELIMINARY PROJECT SCHEDULE**

## EXHIBIT C

### CONCEPTUAL AND SCHEMATIC DESIGN TASKS AND DELIVERABLES\*

#### A. Conceptual Design Phase Tasks & Responsible Party

- Program analysis/review; Architect
- Utility review; Architect
- Environmental assessment for review by Architect and Construction Manager; Owner
- Code assessment; Architect
- Project budget, planning/cost analysis; Construction Manager
- Budget categories; Construction Manager
- Project schedule; Construction Manager
- Site Analysis; Architect
- Confirm design durations for schematic design, design development, contract document; Architect
- Review and determine any systems, structure, and equipment that can be reused as part of stadium reconstruction; Architect

#### Conceptual Design Phase Deliverables & Responsibilities – **Due November 11, 2008**

- Preliminary project work plan; Architect
- Programming report for review/signoff by Owner/Vikings; Architect
- Preliminary total project budget; Construction Manager
- Completed predesign document, concept sketches, and renderings; Architect

#### B. Schematic Design Phase Tasks & Responsible Party

- Project team/or subconsultant determination with recommendation of Architect and Construction Manager; Owner
- Project Delivery Method with input from Architect, Construction Manager, and Vikings; Owner
- Constructability Review; Construction Manager
- Develop recommended building close down/reconstruction schedule; Construction Manager
- Develop project phasing requirements; Construction Manager
- Identify permit process; Construction Manager
- Identify necessary review periods/timeframes; Construction Manager
- Confirm construction durations; Construction Manager
- Determine and establish deadlines for Certificate of Occupancy, Substantial Completion, and Final Completion; Construction Manager
- Hold sustainability work session in order for project team to work on specific strategies for meeting sustainability goals; Architect

- Evaluate status of project's energy consumption analysis, code compliance, and efficiency goals. Reference MN State B3 guidelines; Architect
- Evaluate building's energy consumption using an energy model. Refine project's energy efficiency goals; Architect
- Discuss/determine any other energy, salvage, reuse, recycling options; Architect
- Provide site civil survey for review by Architect and Construction Manager; Owner
- Review/Develop storm water management needs; Architect
- Develop utility connection points and invert elevations; Architect
- Develop landscape, hardscape, and grading plan; Architect
- Develop traffic and pedestrian circulation plan; Architect
- Review construction parking standards including traffic control, detours, staging areas, crane locations, permits, and lane closures; Construction Manager
- Review emergency services access and staging; Construction Manager
- Assess needs/location for temporary fencing, webcam, and security officers; Construction Manager
- Review issues of public art both interior and exterior; Architect
- Review loading dock location and access; Architect
- Provide geotechnical and environmental data for review by Architect and Construction Manager; Owner
- Determine and review setback requirements both from a code perspective but also including NFL security requirements; Architect
- Reconfirm programmatic requirements; Architect
- Consider impact of structural systems on surrounding spaces due to noise and vibration; Architect
- Review design intent; Architect
- Develop outline specification integrating systems, products, and procedures; Architect
- Review utility loads; Architect
- Review code compliance; Architect
- Review any public art process themes; Architect
- Integrate building components with permanent storm water plans; Architect
- Develop building demolition plans; Architect
- Locate and size mechanical, electrical (stack), telecom (stack), custodial closets/storage, and toilets of men, women and family (stack); Architect
- Develop skin materials and colors; Architect
- Confirm massing; Architect
- Develop floor plans; Architect
- Develop building circulation systems, entrances, horizontal and vertical; Architect
- Review roof systems both fixed and moveable, gutters, and downspouts; Architect
- Review screening and sightlines; Architect
- Develop square footage; Architect
- Determine and review room numbering systems; Architect
- Develop and review color renderings for Owner design approval; Architect
- Review x-ray equipment and room requirements; Architect

- Provide Building Code summary; Architect
- Provide information on hazardous materials and removal/remediation for review by Architect and Construction Manager; Owner
- Develop MEP/FP system design; Architect
- Provide calculated energy loads for MEP; Architect
- Develop ceiling and vertical chase strategy for MEP/FP; Architect
- Review code requirements for MEP/FP/Food Service; Architect
- Develop single line drawings for MEP/FP; Architect
- Review and confirm total budget developed in Concept Phase; Construction Manager
- Identify budget variances, lump sum or not to exceed amounts, proposed add/or deduct alternate items; Construction Manager
- Develop and finalize strategy to reconcile variances; Construction Manager
- Review preliminary costs for labor/materials of construction, allowances, contingencies both design/construction, bonds, insurances, fees, and general conditions; Construction Manager
- Community/legislative presentations with participation by Architect and Construction Manager; Owner
- Develop and review requirements for Owner - events of baseball, soccer, motorsports, and NCAA basketball; Architect

**Schematic Phase Deliverables – Architect Deliverables Due January 20, 2009;  
Construction Manager Deliverables Due February 10, 2009**

- Design documents; Architect
- Code summary; Architect
- Total project budget cost estimate; Construction Manager
- Program elements by gross square footage; Architect
- Proposed project schedule; Construction Manager
- Renderings/drawings/video/models as required by Owner; Architect

**\*This listing contains necessary tasks to be performed and completed by the assigned Project team members. Other Project team members will participate in the tasks as appropriate. It is not represented to be a complete and final list. There may be additional tasks necessary to complete the work.**

## **EXHIBIT D**

### **OWNER'S CONSULTANTS SERVICES**

Geotechnical Consulting Services

Testing Consulting Services

Traffic Consulting Services

Environmental (EIS) Consulting Services

Boundary and Topological Surveys

**EXHIBIT E**  
**FORM OF MONTHLY INVOICE**

**EXHIBIT F**  
**ARCHITECT'S STAFF**

**EXHIBIT G**

**HOURLY RATES FOR ADDITIONAL SERVICES**

## **EXHIBIT H**

### **ADDITIONAL SERVICES WHEN CONSTRUCTION MANAGER ACTS AS CONSTRUCTOR**

Architect agrees that if the Owner, at its option and sole discretion, selects the Construction Manager to serve as the Constructor for the Project, the Architect will perform the following Additional Services set out in this Exhibit for a lump-sum fixed price of \$\_\_\_\_\_. These Additional Services are in addition to and not in lieu of the Basic Services to be provided by Architect during the Bidding and Negotiation Phase, Construction Administration Phase and Post-Construction Phase, as the case may be.

1. Bidding or Negotiation Phase. The Architect will serve as the professional consultant and advisor to the Owner during the negotiation of a guaranteed maximum price (GMP) contract for construction of the Project by the Construction Manager. In such capacity, the Architect will review bids or proposals of the Construction Manager and any subcontractors, prepare analyses, make recommendations to the Owner, advise Owner on the acceptability of the subcontractors for the Project, and prepare and negotiate the Project Construction Contract for approval and execution by Owner.

2. Administration. The Architect will provide administration of the Project Construction Contract and Contract Documents and will be the Owner's representative during the Bidding and Negotiation, Construction Administration and Post-Construction Phases of the Project. Since the Construction Manager will be acting as Constructor for the Project, the administrative, consultation and oversight services it would provide to the Owner under Section IV.B during the Bidding and Negotiation, Construction Administration and Post-Construction Phases of the Project will devolve to the Architect and the Architect will provide such services as though the Construction Manager were not named as having any responsibility therefor. Nothing herein shall release or relieve any of the Construction Manager's obligations as Constructor under the Project Construction Contract or Contract Documents.

3. On-Site Presence. Architect shall maintain competent full-time staff at the site during the Construction Administration Phase to coordinate construction of the work. The on-site staff shall have experience on projects of the nature and magnitude of this Project. The on-site staff shall conduct on-site observations and spot checks of the work in progress as a basis for determining conformance of the work with the Contract Documents, assist the Constructor's superintendent in understanding the intent of the Contract Documents, communicate with the Architect and Owner regarding any details or information required at the site for proper execution of the work, be alert to the construction schedule and to conditions that may cause a delay in completion, keep a daily diary or log book recording hours on site, weather conditions, daily activities, observations and decisions, and otherwise attend to activities on-site and progress of the work.

4. Critical Path Schedule. Architect shall direct the Constructor (and others, where appropriate) to prepare and update a critical path schedule for completion of the Work. In the

event of delays impacting the critical path schedule, Architect shall make recommendations to Owner for corrective action by the Constructor.

5. Monthly Reporting. During the Construction Administration Phase, the Architect shall furnish to Owner monthly reports containing (i) a status of construction; (ii) a comparison of the GMP to the Construction Costs incurred through the date of the report and a comparison of the Project Schedule to the work actually completed through the date of the report; (iii) a summary of change orders made during the month covered by the report; (iv) any revision to the Project Schedule and/or GMP made during the month covered by the report; (v) a list of all pending change orders and all outstanding issues requiring action or approval by Owner; and (vi) any other reports concerning the progress or cost of the Project as Owner may reasonably request.

6. Construction Meetings. The Architect shall schedule and conduct meetings to discuss construction procedures, progress and scheduling with the Construction Manager acting as Constructor. The Architect shall prepare or direct the Construction Manager to prepare minutes of such meetings and promptly distribute such meeting minutes to Owner and the meeting attendees.

7. As-Built Plans. Architect shall obtain from the Construction Manager acting as Constructor record drawings or, if required by the Project Construction Contract, “as-built” drawings, as construction progresses.

8. Constructor Performance. Architect will cause the Construction Manager acting as Constructor to maintain a daily log containing the number of workers, hours worked by such workers, equipment used, work accomplished, problems encountered and other relevant data as the Owner may require. Although Architect shall not guarantee the performance by the Construction Manager, Architect shall recommend courses of action to the Owner when Owner or Architect becomes aware that requirements of the Project Construction Contract are not being fulfilled or when the Construction Manager falls behind in its schedule; shall communicate recommendations, as directed by the Owner, to the Construction Manager on behalf of the Owner; shall monitor the Construction Manager’s performance of such recommendations; and shall report the Construction Manager’s progress to the Owner on at least a monthly basis.

9. Deficient Work. The Architect shall notify Owner if the Architect becomes aware that the work of the Construction Manager acting as Constructor is not being performed in accordance with the requirements of the Contract Documents. As appropriate, the Architect shall have authority, with written authorization from the Owner, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. The Architect shall review any and all test reports and notify the Owner and the Construction Manager, as appropriate, of deficiencies in the Work of which Architect becomes aware and shall make recommendations to Owner with respect thereto. With the written authorization of Owner, the Architect may reject work which does not conform to the requirements of the Project Construction Contract or Contract Documents.

10. Project Start-Up and Commissioning. The Architect together with the Owner shall monitor and observe the testing, start-up and commissioning of all utilities, systems and equipment for the Project, including without limitation, mechanical, electrical, and plumbing systems, roof mechanization systems, concessions infrastructure, scoreboards, electronic signage, and audio and broadcast infrastructure. Owner shall make available appropriate employees for training on such systems and equipment during the start-up process.

11. Project Close-Out. The Architect shall complete the final close-out of the Project by (i) obtaining or causing the Construction Manager to obtain, all governmental approvals and permits required for the legal use and occupancy of the Project, (ii) obtaining all warranties, guarantees and installation manuals the Construction Manager is required to provide pursuant to the Project Construction Contract, (iii) obtaining all affidavits, waivers, and releases the Construction Manager is required to provide pursuant to the Project Construction Contract to achieve final completion of the Work, (iv) analyzing all claims (including change order disputes and other claims for extra compensation) asserted by the Construction Manager, (v) collecting and/or otherwise resolving any and all backcharge claims that Owner may assert against the Construction Manager, including assistance with any legal proceedings instituted by Owner and/or any Contractor, and/or (vi) representing Owner at meetings and/or inspections scheduled by Owner and held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

**EXHIBIT I**

**LIST OF SUBCONTRACTORS AND FEES**

## **EXHIBIT J**

### **SUBCONSULTANT INSURANCE**

1. The Structural Engineering Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$5,000,000/each claim and in the aggregate.
2. The Mechanical/Electrical/Plumbing/Fire Protection Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$5,000,000/each claim and in the aggregate.
3. The Civil Engineering Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$5,000,000/each claim and in the aggregate.
4. The Lighting Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
5. The Building Controls Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
6. The Graphics and Way-finding Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
7. The Security Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
8. The Vertical Transportation Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
9. The Telecommunications Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
10. The Curtain Wall Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
11. The Food Service Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
12. The Sound/Video Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000/each claim and in the aggregate.
13. Roof Mechanization Subconsultant shall provide and certify to the existence of professional liability insurance in the amount of \$2,000,000 each claim and in the aggregate.

**EXHIBIT K**

**ANTICIPATED SCHEDULE OF FIXED PRICE PAYMENTS**

## **EXHIBIT L**

### **DISPUTE RESOLUTION PROCEDURES**

1. With respect to any Claim, prompt notice thereof shall be given and within fourteen (14) days of the event giving rise to the Claim. At the next Project meeting following delivery of such notice, Architect and the Owner shall reserve time at the end of such Project meeting to attempt to resolve such Claim at the field level through discussions between Architect's Senior Project Manager and the Project Representatives. If a Claim cannot be resolved through Architect's Senior Project Manager and the Project Representatives within thirty (30) days after the initial attempt, then, Architect's Senior Representative (to be designated by Architect) and the Owner's Senior Representative (to be designated by Owner), upon the request of either Party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such Claim. Prior to any meetings between the Parties, the Parties shall exchange relevant information that will assist the Parties in resolving their Claim. If a Party intends to be accompanied at a meeting by an attorney, the other Party shall be given at least ten (10) days' notice of such intention and may also be accompanied by an attorney.

2. If, after meeting, the Senior Representatives determine that the Claim cannot be resolved on terms satisfactory to both Parties, the Parties shall, within fourteen (14) days after the meeting of the Senior Representatives, submit the Claim to non-binding mediation administered jointly by the Parties to the mediation and otherwise in accordance with the Construction Industry Claim Resolution Procedures of the American Arbitration Association (AAA) then in effect. Unless otherwise agreed by the Parties, the Parties shall select one of the pre-qualified mediators (if any) set forth in Section 9 below. Within seven (7) days after the selection of the mediator, the Parties and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation and the procedures that will govern the mediation. The cost and expense of the mediator shall be equally shared by the Parties and each Party shall submit to the mediator any information or position papers that the mediator may request to assist in resolving the Claim. The Parties will not attempt to subpoena or otherwise use as a witness any person who serves as a mediator, will assert no claims against the mediator as a result of the mediation, and will hold the mediator harmless from claims by third Parties arising out of or relating to the mediation provided for in this Section. Notwithstanding anything in the above to the contrary, if a Claim has not been resolved within one hundred twenty (120) days after the initial meeting between Architect's project manager and the Owner Project Rep, then either party may elect to proceed under Section 5 below.

3. In the event of any dispute arising by or between the Owner and Architect, each Party shall continue to perform as required under the Agreement notwithstanding the existence of such dispute. In the event of such a dispute, the Owner shall continue to pay Architect as provided in the Agreement, excepting only such amount as may be disputed.

4. Unless the Parties otherwise agree, if a Claim has not been settled or resolved within one hundred twenty (120) days after the initial meeting of Architect's project manager and the Project Representatives, then either Party shall notify the other Party of its intent to pursue the Claim further. Within fourteen (14) days after receipt or delivery (as the case may be) of such

notice, the Owner shall send written notice to Architect specifying whether any unresolved Claim shall be resolved by either (a) litigation in a court of competent jurisdiction located in Hennepin County or (b) arbitration, conducted through any nationally recognized arbitration provider, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then currently in effect. Any such election shall be in the Owner's sole discretion. Upon such election, either Party may then commence litigation or arbitration proceedings, as the case may be. All arbitration proceedings shall be held in Hennepin County, Minnesota. If the Owner fails to send the above referenced written notice within the required fourteen (14)-day period, the Owner will be deemed to have elected to litigate the unresolved Claim.

5. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations; provided, however, notwithstanding anything in the Agreement to the contrary, if any Claim has not been resolved to the mutual agreement of the Parties within any applicable statute of limitation period, then either Party may commence litigation on such Claim prior to the expiration of such period in order to preserve its rights.

6. Any arbitration arising out of or relating to the Agreement shall at the request of either party include, by consolidation or joinder or in any other manner, other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. Arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not related to the matter in dispute. The agreement to arbitrate under this Exhibit shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award of the arbitrators may be entered as a judgment in any court of competent jurisdiction.

7. In any dispute between the Owner and Architect, the prevailing party in any arbitration or litigation shall be awarded its reasonable attorneys' fees and costs, in addition to any other damages or other amounts to which it may be entitled; provided, however, that a plaintiff shall never be considered to be a prevailing party under this provision if the final award is less than the last written offer of settlement issued by the defendant prior to the institution of either arbitration or litigation and a defendant shall be considered to be a prevailing party if the final award is less than is less than the last written offer of settlement issued by the defendant prior to the institution of either arbitration or litigation.

8. Architect and Owner agree that any of the following persons will be acceptable mediators for any mediation of a Claim:

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**EXHIBIT M**  
**EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION**

1.1 RULE I – EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION RULES AND REGULATIONS

Authority, Purpose and - Scope - The purpose of these Affirmative Action Rules and Regulations (hereinafter Rules and Regulations) is to achieve the aims of the Metropolitan Sports Facilities Commission (hereinafter referred to as the Commission) to promote and ensure equal opportunity through affirmative action for all persons without regard to race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status, or status with regard to public assistance, employed or seeking employment, contracting or seeking to contract with the Commission.

Administrative Responsibility - The Executive Director or designee of the Commission have been delegated authority for carrying out the responsibilities assigned by the Commission's Board of Directors that explain which Commission contractors and subcontractors are subject to or exempt from said compliance Rules and Regulations.

All correspondence regarding these Rules and Regulations should be directed to the Executive Director, Metropolitan Sports Facilities Commission, 900 South Fifth Street, HHH Metrodome, Minneapolis, Minnesota 55415 or call 332-0386.

Definitions - Unless the contract indicates otherwise or a written notice is given by certified mail the following definitions are applicable to all contractors and subcontractors:

1. Affirmative Action - Is a goal-oriented action designed to overcome the effects of prior discrimination in employment and contracting for minorities, women, and disabled persons.
2. Affirmative Action Plan - Is a written narrative plan designed to assist an employer to achieve its employment goals for minorities, women and disabled persons through good faith efforts in all areas of employment and contracting.
3. Affirmative Action Program - Is a written plan, wherein a contractor or subcontractor conducts a self-analysis of all phases of its business operation to determine any problems including, but not limited to contracting, hiring, layoff, terminations, rates of pay or other forms of compensation, and selections including apprenticeship and established goals and timetables and other appropriate remedial measures.
4. Commission - Metropolitan Sports Facilities Commission.

5. Compliance - Means a determination by the Commission and or appropriate government enforcement agency that a contractor or subcontractor is adhering to the Commission's affirmative action and non-discrimination requirements.
6. Contract - Means any contract, subcontract, agreement, purchase or understanding, written or otherwise, for the procurement or granting of anything of service or value.
7. Contractor - Means any person(s) including any subsidiary or affiliate who is bidding on, intends to bid or has been awarded a contract by the Commission through a competitive bidding procedure, negotiation, or other means.
8. Executive Director - Means Executive Director or designee.
9. Disabled Person - Means any person who:
  - A. Has a physical or mental impairment which substantially limits one or more major life activities; or
  - B. Has a record of such an impairment; or
  - C. Is regarded as having such an impairment.
10. Equal Opportunity/Affirmative Action Clause - Unless exempted by Executive Director, all Commission contracts shall include the following provisions, specifically or by reference.

During the performance of this contract, the contractor or subcontractor agrees as follows:

- (1) The contractor or subcontractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age (40-70), marital status, or status with regard to public assistance. The contractor will take affirmative action to ensure that all employment and contracting practices are free of such discrimination. Such employment and contracting practices include but are not limited to the following: Bidding, negotiations, agreements, purchase orders, hiring, upgrading, demotion, promotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) In the event of the contractor's or subcontractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible by the Commission for further contracts. In addition,

the contractor or subcontractor shall be liable for any and all costs and expenses incurred by the Commission including but not limited to legal fees, consultant fees, and other sources the work and services to be rendered or performed or the goods or properties furnished or delivered to the Commission under this contract or subcontract and for administrative costs incurred in seeking compliance with the nondiscrimination clause of this contract. The Commission, when deemed appropriate may withhold payment until such time as the contractor is found to be in compliance or in the event that withholding a portion of the contract or subcontract is not a feasible alternative, then liquidated damages of one (\$1,000.00) thousand dollars for each day that the Executive Director determines that there is cause to believe that the contractor or subcontractor is in noncompliance with this section shall be imposed, or is otherwise adjudicated to be in compliance.

- (3) Should conciliation and persuasion fail to eliminate the complained acts or practices, the Executive Director shall request a hearing before the Commission on the subject matter of noncompliance. Upon said referral, the Executive Director may request that sanction under paragraph (2) of this section be immediately imposed.
  - (4) Where the Executive Director has requested a hearing from the Commission, the Chairperson may refer the matter to the appropriate standing committee, no later than its second next meeting, for the public hearing on the alleged noncompliance and the committee shall report its findings to the Commission. The Commission may take final action including final imposition of sanctions under paragraph (2) of this section.
11. Investigate - When the Commission deems it appropriate and necessary, to determine compliance with these rules, regulations and applicable federal, state and local civil/human rights laws to conduct an investigation into the contractor or subcontractor compliance with said laws.
  12. Letter of Intent - Means a letter from the contractor or subcontractor requesting their compliance with affirmative action as required by the Commission and stating dollar amounts and their intent to enter into binding contract with them upon award of the contract.
  13. Minority or Minorities - Means persons according to Minnesota Admin. R. 5000.3400 Subp. 18 who are Black, Hispanic, Asian or Pacific Islander, or American Indian or Alaskan Native.
  14. Non-Compliance - Means a determination by the Commission that a contractor or subcontractor is not adhering to the Commission's affirmative action and nondiscrimination requirements. The Commission may rely totally or in part on

noncompliance findings by federal, state or local enforcement agencies in lieu of its own noncompliance investigation.

15. On-site Review - Means a review of the contractor's or subcontractor's location(s), to determine compliance with these rules and regulations.
16. Person - Includes natural persons, corporations, companies, partnerships or unincorporated associations.
17. Pre-award - Means the time period prior to the award of a contract when the Commission determines if a person, corporation, organization, association, company, partnership or unincorporated associations can comply with the affirmative action mandates of the Commission.
18. Subcontract - Means any agreement, arrangement or understanding, written or otherwise between a Commission contractor, subcontractor or person furnishing supplies or services.

## DUTIES OF THE COMMISSION

### General Responsibilities

- (1) Each director or supervisor will be held responsible for providing all the necessary information and assistance to contractors and subcontractors to seek compliance with the equal opportunity clause.
- (2) Promptly notify the Executive Director in writing whenever an application for funds exceeding \$100,000.00 or a bid exceeding \$100,000.00 on a contract has been received and has been recommended for approval to the Commission.
- (3) Attach to each written call for bids or application, on contracts of \$100,000.00 or more, a copy of the affirmative action bid specifications notice.
- (4) Disseminate to each bidder, or applicant for financial assistance who has previously received such assistance, the Affirmative Action Bid Specification Notice immediately upon review of the bid, application or request for proposal.
- (5) Include, specifically or by reference, in all media advertising placed by the Commission for bids or fund applications of \$100,000.00 or more a clause indicating that such bidders, applicants, prime contractors and prospective subcontractors will be subject to a pre-award compliance review.
- (6) Remove debarred or suspended contractors and subcontractors from its active contractor's list.
- (7) Maintain an updated listing of past and present debarred, terminated or suspended contractors.

- (8) Contact federal, state, and local enforcement agencies regarding debarred, suspended or terminated contractors.
- (9) Withhold payment of all or portions of the contract or subcontract amounts from contractors and subcontractors debarred, terminated or suspended.
- (10) Cease the solicitation or consideration of bids or applications from contractors or subcontractors debarred or suspended from Commission contracting.
- (11) Coordinate any compliance review with other federal, state or local enforcement agencies.

## RULE II - RECORDKEEPING AND REPORTS

For the purpose of aiding the Executive Director in determining contractor or subcontractor compliance with the Rules and Regulations.

- A. Each contractor, subcontractor, bidder, applicant and prime contractor and proposed subcontractor shall retain apart from individual employee personnel files, and have available for inspection by the Commission the following documentation by race, sex, and disability.

"By name, job title, rate of pay or salary, the total number of employees, employment applicants, applicants interviewed, applicants tested, applicants hired, employee promotions, demotions, transfers, layoffs, recalls from layoff, terminations, company trainees and other forms of documentation that the Executive Director or the Commission deems necessary to determine the compliance status of the contractor or subcontractor."

- B. Each prospective contractor and proposed subcontractor shall, within five (5) work days of notification of prime candidacy for the proposed contract or subcontract in excess of \$100,000.00 have available for inspection by the Executive Director or designee:
  1. State of Minnesota Affirmative Action Data page.
  2. Company-wide workforce tabulation showing the total number of employees including minorities, women and disabled persons, by job title.
  3. For the 12 month period immediately next or during the contract period, the total workforce intended to be hired or allocated to such contract work including a projection of minority, women and disabled persons utilization in each job title and job grouping and major occupational category to include goals and timetables to correct underutilization.
  4. Copies of executed letters of intent sent to contractors and subcontractors.

5. Other such documentation as will show the prospective contractors' or subcontractors' ability to comply.
- C. Failure to file timely, complete and accurate reports as required by the Rules and Regulations adopted thereto constitutes noncompliance with equal opportunity affirmative action clause or in the case of prospective contractors or proposed subcontractors, an inability to comply with these Rules and Regulations.
  - D. The bidder, applicant, contractor or subcontractor shall permit the Executive Director to have access to its files, books, records, payroll and accounts shall furnish the Executive Director with all information and reports necessary for the pre-award and on-site compliance.
  - E. Reports filed pursuant to this Section, or any other section of these Rules and Regulations shall be used solely for the purpose of the Commission to determine a contractors' and subcontractors' ability to comply. Reports and other information filed pursuant to this Section, which contain confidential, commercial, or financial information, or other information, the disclosure of which would cause substantial harm to the competitive position of the contractor, subcontractor or any prospective contractive party shall not be disclosed to any third party without the written approval from the person submitting the report. Data gathered and maintained pursuant to the Minnesota Government Data Practices Act shall be disseminated pursuant to said act.

### RULE III - REQUIREMENTS OF CONTRACTORS AND SUBCONTRACTORS

- A. Each contractor or subcontractor shall within five (5) days after receipt of these rules and regulations or award of contract or subcontract provide the Executive Director with the following:
  - (1) State of Minnesota Affirmative Action Data page.
  - (2) Take affirmative action by conducting a company-wide utilization analysis of each job title, job grouping, major occupational category and company-wide workforce to determine underutilization of minorities, women, and disabled persons based on the availability subject to Department approval in:
    - a. The present workforce;
    - b. Applicants for employment within the past 12 months;
    - c. Hires within the past 12 months;
    - d. Promotions, demotions, transfers, terminations, etc., within the past 12 months and overrepresentations of minorities, women and disabled persons;
    - e. Terminations within the past 12 months;
    - f. Layoffs within the past 12 months.

- (3) Conduct an audit of its employees' procedure and policy manuals.
- (4) Identify contracting opportunities for minorities, women and disabled persons.
- (5) Where deficiencies are found to exist, address and remedy those deficiencies through the promulgation of a written affirmative action plan.
- (6) Maintain the results of the utilization analysis, audits, written affirmation action program, supporting documentation and other documentation as the Executive Director may require through policy or regulation at its main place of business within the local area.
- (7) Notify the Executive Director within five (5) days after completion of the utilization analysis or development of the affirmative action program, of such completion.

B. Each contractor and subcontractor will:

- (1) Review opportunities for Targeted Group Businesses.
- (2) Comply with Commission's Targeted Group Business goal.
- (3) Maintain records for monitoring progress toward goals.
- (4) Contract only with firms having government certification.
- (5) Post in a conspicuous place your affirmative action policy.
- (6) Notify labor organizations of your affirmative action commitment.
- (7) See that collective bargaining agreements include a nondiscrimination clause.
- (8) Review and revise collective bargaining agreements whenever current provisions are identified as barriers to equal opportunity and affirmative action.
- (9) See that the union grievance process is adequately representing and processing grievances on behalf of all persons.

C. State Purchasing Requirements

- (1) All businesses which employ in Minnesota more than 40 full time employees on a single day during the previous 12 months shall continue to submit their affirmative action plans (now specified to be for the employment of minority persons, women and qualified disabled individuals) to the Department of Human Rights before a state agency can accept a bid for more than \$100,000 and they must have a certificate of compliance before the contract can be executed.
- (2) All businesses which did not employ more than 40 full time employees in Minnesota during a single day during the previous 12 months and whose principle place of business is located outside of the United States is exempt from the affirmative action requirements for contracts or bids for more than \$100,000.
- (3) All businesses which did employ more than 40 full time employees in a single day in a state outside of Minnesota during the previous 12 months shall supply a unexpired certificate of compliance or certify to the

Commission that it is in compliance with federal affirmative action requirements for contracts or bids for more than \$100,000.

#### RULE IV - EXEMPTIONS

##### A. General

- (1) Single or Cumulative Transactions of \$100,000.00 - Contracts, subcontracts and modifications thereof not exceeding \$100,000.00 within any 12 month period are exempt from the requirements of these Rules and Regulations.
- (2) Contracts with Government Agencies - Any agency or subdivision of such government is exempt from the requirement of these Rules and Regulations.

- ##### B. Withdrawal of Exemptions - When any contract or subcontract is of a class exempted under this rule, the Executive Director may withdraw the exemption for a specific contractor or subcontractor or group of contracts or subcontracts when in the Executive Director's judgment such action is necessary or appropriate to achieve the purpose of the Rules and Regulations.

#### RULE V - DUTIES OF EXECUTIVE DIRECTOR

- (1) Receive the names of prospective contractors and proposed subcontractors who expect to enter into contracts in excess of \$100,000.00.
- (2) Initiate a review of each such contractor and subcontractor to determine the ability of each to comply with the Rules and Regulations.
- (3) Maintain an updated written listing of the barred and reinstated prospective contractors and subcontractors.
- (4) Consult with the Commission's attorney on questions of law arising out of enforcement of the Rules and Regulations.
- (5) Initiate, conduct and coordinate with other compliance review agencies, the investigation of contractors and subcontractors as soon as feasible prior to and after the award of a contract or subcontract.
- (6) Notify the contractor or subcontractor of written compliance review findings, within 30 days from the initiation of a review, including any recommended remedial measures necessary to bring the contractor or subcontractor into compliance.
- (7) Provide technical assistance to complying and noncomplying contractors and subcontractors.
- (8) Report to the Commission, writing quarterly, on all previously noncomplying contractors who have subsequently come into compliance. The report will include actions taken by noncomplying contractors and subcontractors to bring themselves into compliance, and the Executive Director's recommendations to

end any sanctions previously imposed on the contractor or subcontractor at the time of noncompliance.

- (9) Report to the Commission, in writing quarterly, on all complying contractors and subcontractors.
- (10) Conduct compliance-conciliation meetings with noncomplying contractors and subcontractors, within 30 days from the initiation of the pre-award review, to assist said parties in complying with the Rules and Regulations.
- (11) Report to the Commission in writing and within a reasonable time after attempts made by the Executive Director to assist the noncomplying contractor or subcontractor to comply.
- (12) Report in writing to the Commission the final adjudication of the complaint together with findings of fact, conclusions of law and recommended sanctions where there is a determination that the contractor or subcontractor has violated the Rules and Regulations.
- (13) Monitor the contractor or subcontractor for compliance with any agreement and report to the Commission in writing the recommendations for reinstatement when the contractor or subcontractor has fully complied with the orders.
- (14) Conduct construction and nonconstruction on-site compliance reviews to determine contractors' or subcontractors' ability to comply with the Rules and Regulations.

#### RULE VI - REINSTATEMENT OF INELIGIBLE CONTRACTOR OR SUBCONTRACTOR

Any contractor or prospective subcontractor declared ineligible under the Rules and Regulations for further contracts may request reinstatement in a letter directed to the Executive Director. In connection with reinstatement proceedings, the contractor shall be required to show that she/he has made bona fide efforts to carry out employment policies and practices in compliance with the Equal Opportunity/Affirmative Action clause.

EFFECTIVE DATE - The Rules and Regulations contained herein are effective upon approval by the Board of Director of the Metropolitan Sports Facilities Commission.

#### 1.2 Contracting Goals

- 1.2.1 Nondiscrimination Clause - The Metropolitan Sports Facilities Commission (Commission) in accordance with the Commission policies on equal opportunity and affirmative action in employment and contracting, Chapter 363 of the Minnesota Human Rights Act, Chapter 139/141 of the Minneapolis Civil Rights Ordinance and the regulations promulgated pursuant thereto, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to notice, all bidders, contractors and subcontractors will be afforded full opportunity to submit bids in response to invitation and will not be discriminated against on the basis or race, sex, age, disability, affectional preference, marital status, or status in regards to public assistance in consideration for an award.

1.2.2 Affirmative Action - All bidders, contractors and subcontractors must submit with their bid a State of Minnesota Affirmative Action Data page.

1.2.3 Subcontracting - The Commission hereby notifies all bidders, contractors and subcontractors that in regard to any contract entered into pursuant in this invitation to bid, Targeted Group Businesses (TGB's) will be afforded full opportunity to submit bids and/or proposals in response, participate to the maximum opportunity possible and will not be subjected to discrimination on the basis of race, color, creed, ancestry, national origin, religion, sex, age, disability, affectional preference, marital status or status with regard to public assistance.

The goals of the Commission for the utilization of small businesses and TGB's on this project are as follows:

Minority Businesses	8%
Female Businesses	10%
Small Businesses	10%

The State of Minnesota Department of Administration has determined (November 17, 2000) that for construction contracts, businesses owned by Hispanic Americans and American Indians do not qualify as Targeted Group Businesses. However, those businesses do qualify for the supply of products, equipment and supplies.

Bidders, contractors, and subcontractors who wish to remain in competition for the contract will be required to submit a list of TGB's for participation to the Commission, or a written statement analyzing why the TGB goal is not feasible and whether the goal may be met in part.

Award of Contract is conditioned upon providing the required TGB submissions. A Bidder, Contractor, or Subcontractor may use TGB's certified by the State of Minnesota Department of Administration, City of Minneapolis, or Hennepin County.

1.2.4 Employment - The Commission has adopted the following employment goals for this project:

Construction

Minority unskilled:	10%
Minority skilled:	15%
Women skilled/unskilled:	5%
Disabled	1%

Architecture/Engineering

Minority skilled	3%
Women skilled	5%

Bidders, contractors and subcontractors who wish to remain in competition should submit an anticipated workforce to the Commission that either reflects the above-stated goals or explains why the goals are not feasible as well as whether they can be met in part.

Award of the contract is conditioned upon satisfaction of the employment requirements. A bidder, contractor or subcontractor should contact the Minneapolis Building and Construction Trades Council, for a list of qualified construction workers.

**EXHIBIT N**

**STATE OF MINNESOTA – AFFIRMATIVE ACTION DATA PAGE**

**(For responses in excess of \$100,000 only)**

If your response to this solicitation is in excess of \$100,000, please complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363.073) 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 bid or proposal and to obtain Human Rights certification prior to the execution of the contract.*

**How to determine which boxes to complete on this form:**

	Then you must complete these boxes...	<b>BOX A</b>	<b>BOX B</b>	<b>BOX C</b>	<b>BOX D</b>
<b>On any single working day within the past 12 months, if your company...</b>					
Employed more than 40 full-time employees in Minnesota		•			•
Did not employ more than 40 full-time employees in Minnesota, but did employ more than 40 full-time employees in the state where you have your primary place of business			•		•
Did not employ more than 40 full-time employees in Minnesota or in the state where you have your primary place of business.				•	•

**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**

Your response will be rejected unless your business:

has a current Certificate 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 D.** Include a copy of your certificate 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) at \_\_\_\_\_ (time). [If you do not know when the Department received your Plan, contact the Department.] We acknowledge that the plan must be approved by the MDHR before any contract or agreement can be executed. **Proceed to BOX D.**
- We do not have a Certificate 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 D. Call the Minnesota Department of Human Rights for assistance.**

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B – For companies which *have not* had more than 40 full-time employees in Minnesota but *have* employed more than 40 full-time employees on any single working day during the previous 12 months in the state where they have their primary place of business**

You may achieve compliance with the Minnesota Human Rights Act by certifying that you are in compliance with applicable Federal Affirmative Action requirements.

Check one of the following statements if you have not employed more than 40 full-time employees in Minnesota but you have employed more than 40 full-time employees on any single working day during the previous 12 months in the state where you have your primary place of business:

- We are not subject to Federal Affirmative Action requirements. **Proceed to BOX D.**
- We are subject to Federal Affirmative Action requirements, and we are in compliance with those requirements. **Proceed to BOX D.**

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

Check below. You are not subject to the Minnesota Human Rights Act certification requirement.

- We have not employed more than 40 full-time employees on any single working day in Minnesota or in the state of our primary place of business within the previous 12 months. **Proceed to BOX D**

**BOX D – 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.

Name of Company: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone number: \_\_\_\_\_

For further information regarding Minnesota Human Rights Act requirements, contact:

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5<sup>th</sup> Street, Suite 700

St. Paul, MN 55101

Website: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)

Email: [employerinfo@therightsplace.net](mailto:employerinfo@therightsplace.net)

Metro: (651) 296-5663

Toll Free: 800-657-3704

Fax: (651) 296-9042

TTY: (651) 296-1283

**EXHIBIT O**

**ARCHITECT'S STATEMENT**

[DATE]

METROPOLITAN SPORTS FACILITIES COMMISSION  
900 South Fifth Street  
Minneapolis, MN 55415

Re: Reconstructed Multipurpose Stadium

Gentlemen:

The undersigned does hereby state to you as follows:

1. The undersigned is the architect who prepared or supervised the preparation of the Construction Drawings and Specifications for the Project described in the Agreement for Architectural Services between you and [Architect] (the "Architect"), dated \_\_\_\_ ("Architect's Agreement").
2. The undersigned is duly authorized to make the statements contained herein on behalf of the Architect.
3. Copies of all such Construction Drawings and Specifications, including all addenda thereto, have been delivered to you.
4. The Project, to the best of our knowledge, information and belief, has been constructed in accordance with the Construction Drawings and Specifications delivered to you and also in accordance with all applicable laws, ordinances, rules, regulations and requirements (including, without limitation, those with respect to discrimination) of all Governmental Authorities and in compliance with any and all covenants, conditions and restrictions affecting the real property upon which the Project has been constructed (the "Property").
5. The Project, to the best of our knowledge, information and belief, is ready for occupancy, and all certificates necessary to permit the occupancy of the Project, including certificates of occupancy, have been obtained from the appropriate governmental authorities.
6. The Project, to the best or our knowledge, information and belief, has been constructed in accordance with the Construction Drawings and Specifications approved by you, and complies with all applicable zoning, environmental, air quality, planning, subdivision, building, use and all similar type laws, rules, regulations and requirements imposed by all governmental authorities.
7. To the best of our knowledge, information and belief, all utility services necessary for the orderly operation of the Project in accordance with the Construction Drawings and Specifications approved by you are available to the Property at the boundaries thereof. All connections have been made to abutting public water, sewer, gas and electrical facilities and all fees in connection therewith have been paid.

8. To the best knowledge, information and belief of the undersigned, but without investigation, there is no action or proceeding pending before any court, agency or official with respect to the validity of any statutes, ordinances, regulations or restrictions or any permits or approvals thereunder relating to the Project.
9. The Gross Area of the Project is \_\_\_\_\_.

[ARCHITECT]

By: \_\_\_\_\_

Its: \_\_\_\_\_