

REQUEST FOR PROPOSALS

3<sup>RD</sup> PARTY SPECIAL INSPECTOR FOR SMOKE CONTROL SYSTEMS

FOR THE NEW MINNESOTA MULTIPURPOSE STADIUM

IN MINNEAPOLIS, MINNESOTA

February 24, 2015

A. Project Background and Objectives

In 2012, the State of Minnesota enacted 2012 Minnesota Laws, Chapter 299 (the “Act”), to establish the Minnesota Sports Facilities Authority (“Authority”) and to provide for the construction, financing, and long term use of a new stadium (the “Stadium”) and related stadium infrastructure (the “Stadium Infrastructure”) as a venue for professional football and a broad range of other civic, community, athletic, educational, cultural and commercial activities.

As set forth in the Act, the design, development and construction of the Stadium and the Stadium Infrastructure (collectively, the “Project”) is a collaborative process between the Authority and Minnesota Vikings Football, LLC (the “Team”). To that end, the Authority and the Team have prepared this Request for Proposals (“RFP”) for selection of a 3<sup>rd</sup> Party Inspector for Smoke Control Systems.. Proposers may submit responses to all portions of this RFP or a selected sub-set of the overall RFP scope.

The Drawings and Specifications for these systems are incorporated within these Requests for Proposals. The Project is located on a site partially including the site of the former Hubert H. Humphrey Metrodome and also including additional adjacent land that has been acquired, in Minneapolis, Minnesota. The Stadium is being designed to meet the standards required for a National Football League (“NFL”) franchise, as well as other programmatic uses consistent with other multipurpose facilities. The Project will be designed in accordance with the design requirements set forth in the Act and such additional standards as are established by the SDC Group (the “Minimum Design Standards”). Construction of the Stadium and Stadium Infrastructure is now underway with substantial completion of the overall Stadium and Stadium Infrastructure to be achieved not later than July 1, 2016 so as to be ready for occupancy in advance of the Minnesota Vikings’ 2016 NFL season (the “Required Construction Schedule”).

The successful Proposer to the Requests for Proposal will be engaged to provide services for the Project, as further described in the Requests for Proposal and any addendums that will be issued to these RFPs.

B. Intent and Process of the Requests for Proposal

The Requests for Proposal are focused on the selection of one or more of the following:

1.0 Background:

The Minnesota multipurpose stadium is regulated as a high rise building housing smoke protected assembly seating areas. As such, it has multiple pressurized exit stair enclosures, two pressurized exit ramp enclosures, all elevator hoistways are pressurized and 8 levels containing a variety of smoke zones provide smoke protected exit access paths serving smoke protected assembly seating areas.

Minnesota Multipurpose Stadium Smoke Control System Summary:

(15) Identified smoke control zones per M5.06

(12) Pressurized elevator hoist way systems

(9) Pressurized stair systems

(11) Smoke exhaust fans (SEF)

(12) Elevator pressurization fans (EP)

(9) Stair pressurization fans (SP)

(27) Doors for make up air

(70) Smoke control dampers (SCD).

A. General:

All work shall be conducted in accordance with Minnesota State Building Code Section 909.

B. Reference Documents:

Specification	16246.000	Building Code Narrative
	230902	Life Safety Systems
	230903/283110	Smoke Management
	283100	Addressable Fire Alarm Systems

HKS Drawings

CCD-60 Volume 02 Life Safety, Architecture May 02, 2014 included are:

A0.10	LS1.01-.10
LS1.04.FC	LS1.04.FE
LS1.08.1	LS1.11.NG

## 2.0 Responsibilities

The Special Inspector shall:

1. Review the plans, specs and fire fighters smoke control panel design. Meet/or discuss with the design team to establish a full understanding of the design intent for the smoke control systems. Provide an independent review of the smoke control design intent.
2. Facilitate and lead appropriate meetings with City of Minneapolis Code Officials and Fire Department to establish the required testing criteria to validate the design intent of the smoke control system.
3. Review Mortenson's project schedule to incorporate the dates and durations required to validate smoke control system compliance to design intent.
4. Develop procedures and acceptance criteria for the testing of all the above systems. Testing procedures and acceptance criteria shall be acceptable to the mechanical engineer of record.
5. Meet with the general, mechanical, electrical, sprinkler, temperature control and fire alarm contractors to present and discuss the testing procedures and acceptance criteria.
6. Facilitate and lead periodic smoke control coordination meetings necessary to plan for the testing of the smoke control systems.
7. Provide leadership and guidance to contracting team for the installation and field testing of a fully compliant smoke control system.
8. Conduct timely field inspections for all components of the smoke control systems that are in concealed areas. Confirm that all equipment and materials utilized for the smoke control systems comply with code. Identify and record all required air flow rates to be measured by Mortenson's Balancing Contractor.
9. Inspections – The relevant system shall be activated and pretested by Mortenson's relevant subcontractors such that passing criteria are met before the Special Inspector is requested to be onsite. Mortenson's subcontractors shall activate and pretest systems such as smoke detectors and/or sprinkler flow switches on normal and standby power.

The Special Inspector shall:

- a. Observe the Fire Fighters Smoke Control Panel - that it correctly displays information and has the correct manual controls
- b. Visually inspect all dampers and make-up air doors (open/closed)
- c. Measure and document pressure differences across all stairway and elevator hoistway doors
- d. Measure and document door opening forces of all exit stair enclosure doors
- e. All smoke detectors that are part of smoke control systems shall be verified as initiating system activation
- f. Conduct all field observations and distribute documentation of any potential deficiencies related to the smoke control system that may require corrective action to Owner and Mortenson.
- g. Observe retesting if necessary.
- h. Track and validate acceptable corrective measures for any deficiency recorded.
- i. Identify duct systems that will require pressure testing required by Chapter 909. Observe, document and record the successful pressure testing of identified duct systems.
- j. Facilitate and provide leadership for the complete testing of the smoke control systems with the City Inspectors to fully demonstrate compliance to design intent upon completion of the project.
- k. Upon successful completion, a responsible registered design professional employed by this special inspector shall issue a signed, sealed, and dated report of compliance to design intent. This report shall include all appropriate supporting documentation recorded during the construction of the smoke control systems. This report shall also include charts, drawings, and sequence of operations that describe the proper function and maintenance requirements of these systems.

Guidelines shall also be established within this report that identify the periodic testing requirements for the smoke control systems and the documentation required post occupancy.

### 3.0 Project Equity Program

It is the desire of the Authority and the Team to consider as part of their the selection criteria the commitment of the Proposer to exert good faith efforts to comply with the plan of the Authority to ensure equitable opportunities for Minority Owned Business Enterprises ("MBE") and Women Owned Business

Enterprises (“WBE”) to participate in the services covered by this RFP related to the Project. The successful Proposer or Proposers must also demonstrate the ability to comply with workforce goals and targeted zip code hiring goals, and work with organizations to develop effective MBE, WBE and workforce recruitment efforts. As described below, each Proposer should provide a plan describing how they will encourage the participation and utilization of MBEs and WBEs in the Proposers’ performance of their services. MBEs and WBEs that are interested in acting as the provider of the RFP services for the Project are encouraged to respond to the Requests for Proposal. The Authority’s Equity Plan for the design-related services covered by this RFP is the same that has been established in regard to the Design Services Agreement between HKS and the Authority and can be obtained upon request.

C. Requested Qualifications

The Authority and Team reserve the right and discretion to determine the qualifications and responsibility of the Proposers to perform the services that are the subject of the Requests for Proposal. It is the request and intent of the Authority and Team that Proposers responding to these Requests for Proposal have the following qualifications.

- Significant experience in the performance of the scope of services as outlined herein.
- Ability to provide services using small, targeted group or veteran owned businesses for all or a portion of the work.
- Ability to perform the work using women or minorities for all or a portion of the work.
- The 3<sup>rd</sup> Party Special Inspector is required to be a Registered Mechanical or Fire Protection Engineer by the State of Minnesota.

D. RFP Timeline

Advertise and issue Request for Proposals	February 26, 2015
Proposals Due Date	March 19, 2015, 1 p.m. CDT
Project Completion	Proposer shall coordinate its services to coincide with Mortenson and its subcontractors work such that Project Substantial Completion can be achieved by July 15, 2016.

By submitting a proposal, the Proposer affirms that this timeline must be met to avoid the potential for significant harm to the progress of the Project and to the interests of the Authority, Team, and public.

E.1 Proposer Qualifications

The following items shall be included in a Proposal Executive Summary:

- Proposer’s name and address of office that would have central responsibility for the work. Identify the business form of Proposer and list the principal shareholders or other business owners. If the proposed form of entity is a joint venture, please identify each participant and their respective percentage of participation. Provide a summary, on three pages or less, describing why the Proposer is the most qualified for the Project.
- Provide copies of Proposer’s certificates of insurance showing Proposer’s current total limits of liability for commercial general liability, worker’s compensation, employer’s liability, business automobile liability, and professional liability.
- Provide representative list of similar scope projects conducted by Proposer during that last 5 years. Include:
  - Project name.
  - Project location.
  - Contracting or ownership entity.
  - Project description; listing dates of construction, seating capacity, project gross square footage. Proposers shall be specific about which projects have been worked on by current employees while employed by your firm vs. those that were worked on while employees of another employer. List key principal of Proposer who was responsible for the project.
  - Key contact or reference from project Owner including name, title, email, and telephone number.
- Complete and submit a fully executed Confidentiality Agreement
- Submit response to State of Minnesota Affirmative Action Data form and Statement of Non Collusion.

## E.2 Submittal Requirements - Proposal

Proposers shall include the following items in their Proposal.

### **Project Delivery**

1. Project Personnel. Provide names and resumes of key personnel who would be directly responsible for the work. Provide key contact telephone, fax, and email addresses. Provide organizational chart listing proposed team members by name and responsibility. Indicate other projects team members are assigned to currently for years 2015 to 2016. Any other relevant experience pertinent to this Project shall be listed under “Other Significant Experience.”

2. Project Specific Risks. Identify and describe the risks Proposer perceives as being significant for this Project, and how Proposer intends to mitigate, manage, and control the risks.
3. Preliminary Completion Schedule. Please provide Proposer's preliminary completion schedule generally demonstrating Proposer's strategy for completing the Project within the Required Project Schedule.

#### **Equitable Contracting and Hiring**

4. Hiring and MBE/WBE Utilization. Describe Proposer's practices and history of hiring women and minorities. Also describe Proposer's specific plan to use good faith efforts to reach targeted goals for MBE and WBE construction participation on this project, and Proposer's strategies for employing women and members of minority communities pursuant to the Authority's Equity Plan.

#### **Other**

According to the Act, there shall be no disclosure of any information derived from Proposals submitted by competing Proposers and the content of all Proposals is nonpublic data under Chapter 13 of Minnesota Statutes until such time as a notice to award a contract is given by the Authority.

A Proposer's response may also contain any narrative, charts, tables, diagrams, or other materials in addition to those called for herein, to the extent such additions are useful for clarity or completeness of the response. Attachments should clearly indicate on each the page the paragraph in the Requests for Proposal to which they pertain.

These Requests for Proposals, responses to it, and any subsequent negotiations and discussions shall in no way be deemed to create a binding contract or expectation of an agreement between the Proposer and the Authority and Team.

Each Proposer submitting a Proposal in response to this request acknowledges and agrees that the preparation of all materials for submittal to the Authority and Team and all presentation, related costs, and travel expenses are that Proposer's sole expense and neither the Authority nor the Team shall, under any circumstances, be responsible for any cost or expense incurred by the Proposers, except the payment of the stipend that will be given to those short listed Proposers who properly submit in good faith the Preliminary Construction Estimate and otherwise complete the Request for Proposal process. The Authority and Team shall be allowed to keep any and all materials supplied by the Proposers in response to these Requests for Proposal.

The Authority and Team reserve the right to accept or reject any or all Proposals, to amend or alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in proposals submitted. Proposals are

required to remain open and subject to acceptance until an award is finalized, or a minimum of (90) days following the date of submission of Proposals. The Authority and Team also reserve the right to accept or reject any individual sub-consultants that the successful Proposer proposes to use.

F. Proposal Deadline

Proposals are due by 1:00 p.m. CDT, March 19, 2015. One electronic copy and 4 bound copies of each document should be enclosed in a sealed envelope addressed to:

**3<sup>rd</sup> Party Special Inspections – Smoke Control Systems**

Steven C. Maki, PE  
Minnesota Sports Facilities Authority  
511 11th Avenue South, Suite 401  
Minneapolis, MN 55415

One electronic copy and 4 bound copies should also be sent and addressed to:

**3<sup>rd</sup> Party Special Inspections – Smoke Control Systems**

Don Becker, Project Executive  
Garden Homes Development  
13-15 West 54th Street – First Floor  
New York, NY 10019

G. Questions or Inquiries

All questions must be submitted in writing no later than noon CDT, March 13, 2015 to:

Steven C. Maki, PE  
Sr. Stadium Director  
511 11<sup>th</sup> Ave. South Suite 401  
Minneapolis, MN 55415  
Fax: 612.332.8334  
Email: [steve.maki@msfa.com](mailto:steve.maki@msfa.com)

With copies to:

Don Becker, Project Executive  
Minnesota Vikings Football, LLC  
Minnesota Vikings - Winter Park  
9520 Viking Drive  
Eden Prairie, MN 55344  
Fax: 952.828.6513  
Email: [beckerd@vikings.nfl.net](mailto:beckerd@vikings.nfl.net)

H. Minnesota Government Data Practices

All proposals are eventually subject to the Minnesota Government Data Practices Act, Minn. Statutes, Chapter 13, but the Act prohibits disclosure of any information derived from Proposals submitted by competing Proposers, and the content of all Proposals is nonpublic data under Chapter 13 until such time as notice to award a contract is given by the Authority. Proposers shall note with their Proposal any proprietary information or other private data in their submittal.

**EXHIBIT A**

**NEW MINNESOTA MULTI PURPOSE STADIUM  
ACKNOWLEDGEMENT AND ATTESTATION FORM**

**(To Be Submitted With Proposal)**

In submitting a Proposal the undersigned has certified that the Proposer has reviewed the Request for 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems (“RFP”) dated February 26, 2015 and is familiar with the terms and conditions therein and accepts and waives any protest of the terms and conditions imposed under the RFP and all documents identified therein.

The Proposer understands the Authority and Team reserve the right to reject any or all proposals in accordance with its best interest. The Proposer submitting a response does so at its own expense. I hereby certify that the foregoing is true and correct.

Proposer’s Name\_\_\_\_\_

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

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

Date:\_\_\_\_\_

Witness:\_\_\_\_\_

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

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

Date:\_\_\_\_\_

Note: Use full corporate name and attach corporate seal, if any, here. {SEAL}

## EXHIBIT B

### CONFIDENTIALITY AGREEMENT

#### (To Be Included Submitted With Indication of Interest and Qualifications)

This Confidentiality Agreement (the "Agreement") made and entered to as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Minnesota Sports Facilities Authority ("Authority") and \_\_\_\_\_ ("Proposer") in connection with the design, construction and financing of the new Minnesota Multi-Purpose Stadium (the "Project"). For purposes of this Agreement, Minnesota Vikings Football, LLC are hereinafter referred to as the "Team". The Authority and Team and each of their respective subsidiaries and affiliates are hereafter referred to individually or collectively as "Project Participants".

1. For purposes of this Agreement, "Confidential Information" means any and all information accessed, received, obtained or otherwise learned about the Project Participants as a result of the Project, and/or any other information whether or not designated as Confidential Information by the Project Participants. Notwithstanding the above, Confidential Information will not include any information that (a) is or becomes public knowledge other than by the Construction Manager's act or omission or (b) is or becomes available to without obligation of confidence from a source (other than the Project Participants) having the legal right to disclose that information.
1. Without the prior written consent of the Project Participants, which may be given or withheld in their sole and absolute discretion, the Proposer will (a) not disclose any Confidential Information to any third party nor give any third party access thereto, and (b) only disclose the Confidential Information to those of its employees or agents who need to know such information for purposes of completing the Project and who are bound by confidentiality obligations no less restrictive than this Agreement. For the avoidance of doubt, any disclosure by the Project Participants of work product received from the Proposer shall not be considered a breach of this Agreement.
1. The Proposer will use at least the same degree of care to avoid the publication, disclosure, reproduction or other dissemination of the Confidential Information as employed with respect to its own valuable, proprietary information which it protects from unauthorized publication, disclosure, reproduction or other dissemination and in no event shall the Construction Manager use less than reasonable care.
1. If the Proposer receives notice that it may be required or ordered to disclose any Confidential Information in connection with legal proceedings or pursuant to a subpoena, order or a requirement or an official request issued by a court of competent jurisdiction or by a judicial, administrative, legislative, regulatory or self-regulating authority or body, the Proposer shall (a) first give written notice of the intended disclosure to the Project Participants as far in advance of disclosure as is practicable and in any case within a reasonable time prior to the time when disclosure is to be made, (b) consult with the Project Participants on the advisability of taking steps to resist or narrow such request and (c) if disclosure is required or deemed advisable, cooperate with the Project Participants in any attempt made to obtain an order or other reliable assurance that confidential treatment will be accorded to designated portions of the Confidential Information or that the Confidential Information will otherwise be held in the strictest confidence to the fullest extent permitted under the laws, rules or regulations of any other applicable governing body.
1. The Proposer acknowledges that the unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury, the precise measure of which may be difficult to ascertain. Accordingly, the Proposer agrees that the Project Participants will be entitled to specific

performance and injunctive or other equitable relief, without bond, as a remedy for any such breach or threatened breach, in addition to all other rights and remedies to which the Project Participants may have. The Proposer will, except to the extent inconsistent with (a) its use in connection with legal proceedings or (b) applicable law, regulations, rules or official requests, at the Authority's election, destroy or return to the Project Participants any tangible copies of the Confidential Information and permanently delete all electronic copies of the Confidential Information in its possession or control, if any, at the earlier of the request of the Project Participants or the completion of the Project and will certify in writing to the Project Participants that it has completed the foregoing.

1. In the event of any litigation between the Project Participants and the Proposer in connection with this Confidentiality Agreement, the unsuccessful party to such litigation will pay to the successful party therein all costs and expenses, including but not limited to actual attorneys' fees incurred therein by such successful party, which costs, expenses and attorneys' fees shall be included as a part of any judgment rendered in such action in addition to any other relief to which the successful party may be entitled.
1. All references to the Proposer herein also include any of its officers, directors, employees, attorneys, agents, professional advisors and independent contractors and any person, corporation, partnership or other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the undersigned. This Agreement supersedes all previous agreements, written or oral, relating to the above subject matter, and may be modified only by a written instrument duly executed by the parties hereto. All clauses and covenants contained in this Agreement are severable and in the event any of them is held to be invalid by any court, this Agreement will be interpreted as if such invalid clauses and covenants were not contained herein. The Proposer represents and warrants that it has the right and authority to enter into and perform this Agreement. This Agreement may not be assigned without the Project Participants' prior written consent (in their sole discretion). This Agreement shall be construed in accordance with the internal laws of the State of Minnesota, USA, without regard to its principles of conflicts of laws. None of the provisions of this Agreement can be waived or modified except expressly in writing by the parties hereto.

Dated and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
("Authority")

\_\_\_\_\_  
("Proposer") (Seal)

WITNESS:

\_\_\_\_\_

(If Proposer is a Corporation, complete below)

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

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

Attest: \_\_\_\_\_

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

(if applicable)

**EXHIBIT C**

**NON-COLLUSION STATEMENT**

(To Be Included Submitted With Indication of Interest and Qualifications)

STATE OF \_\_\_\_\_

CITY/COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being first duly sworn, deposes and says that he or she is

Title of Person Signing

of \_\_\_\_\_

\_\_\_\_\_

Name of Proposer

states that all statements made and facts set out in the Proposal for the above Project are true and correct; and the Proposer (the person, firm, association, or corporation making said proposal) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with said proposal or any contract which may result from its acceptance.

Affiant further certifies that Proposer is not financially interested in, or financially affiliated with, any other Proposer for the above Project.

Proposer \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_

Notary Public

My Commission Expires

**EXHIBIT D**

**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...	BOX A	BOX B	BOX C	BOX D
<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	Metro: (651) 296-5663
St. Paul, MN 55101	Toll Free: 800-657-3704
Website: <a href="http://www.humanrights.state.mn.us">www.humanrights.state.mn.us</a>	Fax: (651) 296-9042
Email: <a href="mailto:employerinfo@therightsplace.net">employerinfo@therightsplace.net</a>	TTY: (651) 296-1283

EXHIBIT E

---

TERMS AND CONDITIONS  
OF  
PROFESSIONAL SERVICES CONSULTANT AGREEMENT

---

RECITALS

**WHEREAS**, the owner of the Project is the Minnesota Sports Facilities Authority, a public body, corporate and politic and political subdivision of the State of Minnesota (and is defined as the “**Authority**” for purposes hereof), or its assigns or designees; and

**WHEREAS**, the Authority was established to construct, finance, and operate a multi-purpose stadium and related infrastructure as a venue for the National Football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota, and desires to develop certain real estate as a public project described herein as the Stadium Site; and

**WHEREAS**, the Authority and Minnesota Vikings Football Stadium, LLC, a Delaware limited liability company authorized and doing business in the State of Minnesota (and is defined as the “**Team**” for purposes hereof) have entered into a Development Agreement (“**DA**”) in connection with the Project; and

**WHEREAS**, the Project is being developed pursuant to 2012 Minnesota Laws, Chapter 299, as enacted or hereafter amended or supplemented, and including any successor law, providing for, among other things, the construction, financing, operation, and long-term use of a multi-purpose stadium and related infrastructure as a venue for the National Football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota (and is defined as the “**Act**” for purposes hereof); and

**WHEREAS**, the Authority has engaged the services of Hammes Company Sports Development, Inc., as its representative to assist in the planning, development, design, and construction of the Project.

**WHEREAS**, the Authority has engaged the services of HKS, Inc. as the Architect for the Project; and

**WHEREAS**, the Authority has engaged the services of M.A. Mortenson Company as the Construction Manager for the Project; and

**WHEREAS**, the Authority desires to retain the Professional Services Consultant to provide and accomplish the Professional Services Consultant Work pursuant to the terms and conditions of this Professional Services Consultant Agreement; and

**WHEREAS**, the Professional Services Consultant's Work for the Project shall be provided by Persons lawfully licensed to perform such Work in the State of Minnesota; and

**WHEREAS**, the Professional Services Consultant acknowledges and agrees that it shall be required to adhere to the Project Labor Agreement approved by the Authority unless the Authority determines that the Professional Services Consultant is exempted from said Project Labor Agreement; and

**WHEREAS**, the Professional Services Consultant represents that it will complete the Professional Services Consultant Work for the amount set forth in **Exhibit 3**, ("Professional Services Consultant Amount") and achieve Substantial Completion of the Professional Services Consultant Work at or before the certified completion date for the Professional Services Consultant Work as set forth in **Exhibit 4** hereof; and

**WHEREAS**, the Professional Services Consultant is strictly responsible to coordinate the Professional Services Consultant Work with the work of all members of the Project Team, including the coordination of any and all Shop Drawings, Product Data, Samples, or Requests for Information to the Architect in order to avoid any delays or disruption to the Project Team and to meet the Authority's objectives as stated herein; and

**WHEREAS**, the Parties desire to set forth the terms of their agreements in this Professional Services Consultant Agreement to be effective as of the date set forth above.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Professional Services Consultant and the Authority hereby agree as follows:

[THIS SPACE LEFT INTENTIONALLY BLANK]

## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 Basic Definitions

- 1.1.1 The above Recitals are incorporated herein.
- 1.1.2 The definitions set forth in Exhibit 1 hereof and in Appendix A of the General Conditions included as Exhibit 6 hereto shall define certain terms in this Professional Services Consultant Agreement.
- 1.1.3 Exhibits 1 through 13 are attached to and are incorporated as part of this Professional Services Consultant Agreement for all purposes, and their terms apply to and obligate the Professional Services Consultant as if fully set forth herein.
- 1.1.4 [RESERVED]

#### 1.2 Execution, Correlation and Intent

- 1.2.1 The Professional Services Consultant and Authority shall sign this Professional Services Consultant Agreement in not less than triplicate.
- 1.2.2 It is the intent of the Professional Services Consultant and Authority that the Professional Services Consultant Documents include all items necessary for proper execution and completion of the Professional Services Consultant's Work. The Professional Services Consultant Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Professional Services Consultant Documents, but reasonably inferable from the Professional Services Consultant Documents, will be included as part of the Professional Services Consultant's Work. Words and abbreviations that have well-known technical or trade meanings are used in the Professional Services Consultant Documents in accordance with such recognized meanings.
- 1.2.3 Any inconsistencies among and between the Professional Services Consultant Documents shall be governed by the most strict or stringent requirements included therein and as determined by the Authority.
- 1.2.4 The Professional Services Consultant covenants with the Authority to furnish the Professional Services Consultant's best skill and judgment and to cooperate with the Project Participants in furthering the interests of the

Authority and to perform the Professional Services Consultant's Work in an expeditious manner.

**1.2.5 [RESERVED]**

**1.3 Professional Services Consultant's Authorized Representatives**

The Professional Services Consultant's representative authorized to act on behalf of the Professional Services Consultant with respect to the Project is \_\_\_\_\_, or his/her successor designated in writing and approved by the Authority.

**1.3.1 Professional Services Consultant's Key Personnel.** The Professional Services Consultant's Key Personnel and Project staffing in connection with the Project are identified in **Exhibit 5** hereto. Key Personnel may not be removed from the Project, be reassigned or be assigned to additional projects so long as they remain in the Professional Services Consultant's employ.

## ARTICLE 2

### PROFESSIONAL SERVICES CONSULTANT'S RESPONSIBILITIES

#### 2.1 Basic Services and Responsibilities

##### 2.1.1 Services During Construction

- .1 The Professional Services Consultant shall provide all services, work, labor, materials, equipment and other necessary payments as are required to complete the Professional Services Consultant Work as set forth in the Professional Services Consultant Documents (collectively, "**Basic Services**") as are set forth on **Exhibit 1**. The Professional Services Consultant Work is intended to be inclusive of all services, work, labor, materials, engineering, testing, tools, supplies, facilities, management, supervision, and equipment required by, or reasonably inferable from, the Professional Services Consultant Documents necessary to complete the Professional Services Consultant Work pursuant to the Construction Schedule for the Professional Services Consultant Amount.
  
- .2 The Professional Services Consultant Work is more completely described in the Professional Services Consultant Documents, including all of the Professional Services Consultant Work as defined in the Exhibits hereto.
  
- .3 The Professional Services Consultant Work consists of those services performed by the Professional Services Consultant, its employees, Subcontractors, Suppliers, and Sub-subcontractors of all tiers. The Professional Services Consultant is solely and strictly responsible for the performance of all Persons performing the Professional Services Consultant Work, including Subcontractors, Suppliers, and Sub-subcontractors of all tiers. It is the responsibility of the Professional Services Consultant to ensure that all Subcontractors and Suppliers, including Sub-subcontractors at every tier, that is performing any

portion of the Professional Services Consultant Work are familiar with all the terms and conditions of this Professional Services Consultant Agreement and the Professional Services Consultant Documents and that their performance is in accordance therewith.

- .4 The Professional Services Consultant is responsible to complete the Professional Services Consultant Work in strict accordance with the Professional Services Consultant Documents. In the event the Professional Services Consultant undertakes construction activities, the Professional Services Consultant shall continually inspect its Professional Services Consultant Work. The Professional Services Consultant shall cooperate in all respects with the Design Services of the Architect, the Construction Services of the Construction Manager, and the services or work of any other Project Participant involved in the Project. The Professional Services Consultant shall cooperate in all respects with other Persons associated with the Authority, which may include lenders, any lender's inspecting architect or representative, insurers, the Team, sponsors, the National Football League, television broadcast networks, radio broadcasters, cellular/distributed antennae providers, and Governmental Authorities.
  
- .5 The Professional Services Consultant shall be solely responsible for the means, methods, techniques, and sequences it chooses to perform the Professional Services Consultant Work and shall ensure that when finished, the Professional Services Consultant Work complies completely with the Professional Services Consultant Documents. No inspection or approval by others, including the Authority, Team, Architect, Professional Services Consultant, and/or any Project Participant or Governmental Authority, shall relieve the Professional Services Consultant from this responsibility. The Professional Services Consultant shall supervise and direct the Professional Services Consultant Work efficiently, shall at all times enforce good order among Persons under its control, and shall ensure that all Persons under its control have the skills necessary to perform the portion of the Work assigned to them. The Professional Services Consultant shall be responsible for the safe and complete performance of all of its Subcontractors, Suppliers, and Sub-Subcontractors of every tier.

- .6 The Professional Services Consultant shall undertake and perform its professional obligations in the best interest of the Project. Nothing contained in this Professional Services Consultant Agreement shall create any professional obligation, liability or responsibility of the Authority, Team or Indemnitees to perform any aspect of the professional services by provided by the Professional Services Consultant under this Agreement, which professional services shall be the sole and absolute responsibility and liability of the Professional Services Consultant. The Professional Services Consultant shall review Applicable Laws and NFL Rules and Regulations relevant to the scope of the Professional Services Consultant Work, and shall execute its Work accordingly. The Professional Services Consultant and all its Subcontractors of any tier shall perform all Professional Services Consultant Work, including all its professional services, pursuant to the Standard of Care.

## **2.2 Additional Services**

**2.2.1** Other than the Basic Services and responsibilities set forth in **Paragraph 2.1** hereof, the Professional Services Consultant shall not be required to provide any Additional Services, except when ordered to do so in writing.

**2.2.2** Neither the Authority nor Professional Services Consultant anticipates any Additional Services at the time this Professional Services Consultant Agreement is executed.

## **2.3 [RESERVED]**

### ARTICLE 3

#### **AUTHORITY'S RESPONSIBILITIES**

- 3.1** The Authority shall have the obligations and responsibilities set forth herein.
- 3.2** The Authority shall examine documents submitted by the Professional Services Consultant.
- 3.3** **[RESERVED]**
- 3.4** The Authority shall fully cooperate with the Professional Services Consultant who shall be responsible to secure and pay for all building and other permits, licenses, and inspections necessary for the Professional Services Consultant Work.
- 3.5** **[RESERVED]**
- 3.6** Other than as stated in **herein**, the Authority or Indemnitees shall not be responsible for inspecting or testing any portion or progress of the Professional Services Consultant Work, and any tests or inspections performed by the Authority, the Architect, an Indemnatee, or any of their agents shall not relieve the Professional Services Consultant from properly and timely performing the Professional Services Consultant Work.
- 3.7** **[RESERVED]**
- 3.8** **[RESERVED]**
- 3.9** In no event shall the Authority or Indemnitees have any responsibility or liability for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Professional Services Consultant Work, notwithstanding any of the rights and authority granted the Authority and Indemnitees in the Professional Services Consultant Documents.

## ARTICLE 4

### CONTRACT TIME

- 4.1** The Professional Services Consultant shall perform the Professional Services Consultant Work expeditiously, efficiently, and safely in accordance with the Construction Schedule. The Professional Services Consultant shall commence its Professional Services Consultant Work promptly and, subject to adjustment in accordance with and allowed by the Professional Services Consultant Documents, Professional Services Consultant shall achieve the Milestones and Substantial Completion of the Professional Services Consultant Work within the time frames specifically described in **Exhibit 4** hereof. The Professional Services Consultant shall be considered to have achieved Final Completion only after the Professional Services Consultant completes all of the Professional Services Consultant Work and the Professional Services Consultant Work is accepted by the Authority.
- 4.2** **[RESERVED]**
- 4.3** If the Professional Services Consultant is delayed in the progress of the Professional Services Consultant Work by events of Force Majeure, fire or other property damage not caused by the Professional Services Consultant or a Subcontractor, Supplier, Sub-subcontractor of any tier, or other Person for whom Professional Services Consultant is legally responsible, unusually severe weather conditions not customarily encountered in the area surrounding the Project which affect the scheduled progress of the Professional Services Consultant Work, or any other cause for which the Professional Services Consultant is not responsible, then the Contract Time, provided for in **Paragraph 4.1** above, shall be extended by a Contract Revision for a reasonable period of time as agreed to by the Authority. No adjustments to the Contract Time are acceptable without the prior written approval of the Authority as a Contract Revision.
- 4.4** Notwithstanding anything to the contrary in this Professional Services Consultant Agreement, the Professional Services Consultant agrees that, regardless of the cause of delay and whether or not any extension of Contract Time may be granted therefore, Professional Services Consultant shall continue to prosecute all Work not directly affected by said cause of delay and, with respect to such portion or portions of the Work as may be so affected, shall take all reasonable measures to minimize

the effect of said cause of delay. It is a condition precedent to the consideration or prosecution of any Claim for an extension of Contract Time that the foregoing provisions be strictly adhered to in each instance and, if the Professional Services Consultant fails to comply, Professional Services Consultant shall be deemed to have waived the Claim to the extent that proper mitigation would have shortened the period of delay.

#### **4.5 [RESERVED]**

## ARTICLE 5

### PROFESSIONAL SERVICES CONSULTANT AMOUNT AND GUARANTY

**5.1** The Professional Services Consultant Amount shall be as set forth in **Exhibit 3**.

**5.2 Corporate Guaranty**

**5.2.1** Subject to receipt of payment from the Authority of all payments that the Authority is obligated and required to make under this Professional Services Consultant Agreement, the Professional Services Consultant absolutely and unconditionally guarantees to the Authority and the Indemnitees that all of the Professional Services Consultant Work under this Professional Services Consultant Agreement will be performed and completed in accordance with the Professional Services Consultant Documents and will not be defectively designed, fabricated or constructed. The Professional Services Consultant shall pay to the Authority all costs incurred, including reasonable attorney fees, in enforcing the performance and payment of this guaranty. If the Professional Services Consultant is an Affiliate of another parent entity or Person, or if the Professional Services Consultant is a joint venture partner in a joint venture, the Affiliate parent entity or joint venture partner must sign the Guaranty that is attached hereto as **Exhibit 8**.

## ARTICLE 6

### DISCOUNTS, REBATES, AND REFUNDS

- 6.1** Cash discounts obtained on payments made to Subcontractors or Suppliers shall accrue to the Authority during or after the term of this Professional Services Consultant Agreement. Trade discounts, rebates, refunds, and amounts received from sales of surplus material and equipment shall accrue to the Authority. The Professional Services Consultant shall notify the Authority of provisions that will be required of the Authority to secure trade discounts, rebates, and refunds as described in this **Paragraph 6.1**. If it elects to do so, the Authority shall advance such funds in a timely manner as are required to take advantage of discounts. The Professional Services Consultant shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Professional Services Consultant Work prior to providing the Authority with seven (7) days' prior written notice of the potential discount, rebate, or refund and an opportunity to furnish funds or take other actions necessary to obtain such discount, rebate, or refund on behalf of the Authority in accordance with the requirements of this **Paragraph 6.1**.

## ARTICLE 7

### ACCOUNTING RECORDS

- 7.1** The Professional Services Consultant shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Professional Services Consultant Agreement and as directed by the Authority and Team. The accounting and cost control systems shall be reviewed and approved by the Authority and Team, which approval shall not be unreasonably withheld. Upon receiving seven (7) days notice, the Professional Services Consultant shall afford the Authority or Team and the Authority's or Team's accountants reasonable access to appropriate personnel for interviews and the necessary and relevant records, books, cost reports, labor rates, labor schedules, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda, and other electronic and hard copy data to the extent relating to the Professional Services Consultant's right to payment under and the Professional Services Consultant's compliance with the terms and conditions of this Professional Services Consultant Agreement, and the Professional Services Consultant shall preserve this information for a period of twelve (12) years after final payment, or for such longer period as may be required by law. The Professional Services Consultant shall account for and keep track of the Cost of the Work, including all materials, equipment and labor utilized in the performance of the Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Professional Services Consultant Agreement. All records shall be maintained in accordance with Generally Accepted Accounting Procedures, consistently applied. Subcontractors retained by the Professional Services Consultant on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Professional Services Consultant under this **Article 7**. In addition to all other rights under the Professional Services Consultant Documents, the Authority and Team representatives shall have the right to conduct full and complete audits of the Professional Services Consultant with respect to the Professional Services Consultant Work and also to the extent relating to the Professional Services Consultant's right to payment under and the Professional Services Consultant's compliance with the terms and conditions of this Professional Services Consultant Agreement. If any inspection by the Authority or Team of the Professional Services Consultant's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Professional Services Consultant Documents reveals an overcharge, including, without limitation, any untimely request for payment, the Professional Services Consultant shall pay the Authority upon demand an amount equal to such overcharge, for reimbursement for said overcharge, and all administrative and legal expenses incurred in determining or recovering the overcharge. The Authority's rights under this provision shall survive termination of this Professional Services Consultant Agreement or Final Completion.
- 7.2** The Professional Services Consultant shall provide the Authority and Team copies of all documents and records associated with the Work that the Authority or Team

deem necessary. The Professional Services Consultant shall provide all Subcontracts, material purchase orders, and insurance certificates to the requesting party in an executed format for all Subcontractors and Suppliers prior to any such Person commencing work on the Project. The Professional Services Consultant will strictly enforce this requirement.

- 7.3** The Professional Services Consultant is obligated to utilize a Subcontract template for all its Subcontracts that is submitted to the Authority for its approval prior to such use, which approval shall not be unreasonably withheld.
- 7.4** All changes to the Professional Services Consultant Work must be approved in strict accordance with the requirements of the Professional Services Consultant Documents. No change in the Professional Services Consultant Work, in any form, will be approved for payment without the Professional Services Consultant providing the Authority with all reasonably required documentation, including a properly completed Contract Request Form. The Contract Request Form, and all required contractual documentation associated therewith and required by the Authority, must be provided to and approved by the Authority in writing before commencement of any proposed changes in any part of the Professional Services Consultant Work. The Authority will administer a Pending Change Report to identify and track any and all potential changes in the Professional Services Consultant Work, and the Professional Services Consultant is obligated to provide all supporting documentation reasonably required by the Authority to administer the Pending Change Report. The Authority will use the Pending Change Report to provide the Professional Services Consultant with written authorization to proceed with commencing changes to the Professional Services Consultant Work. The Professional Services Consultant is responsible to immediately provide the Authority with timely notification of any pending change associated with the Work in accordance with the requirements of this **Paragraph 7.4** and the Professional Services Consultant Documents and to provide projected cost impacts within five (5) days of notification of such change. The Professional Services Consultant is responsible to provide final costs associated with any pending change within two (2) weeks of inclusion on the Pending Change Report, or such other timeframe as reasonably agreed to in writing by the Authority. If the Professional Services Consultant performs any alleged change in the Professional Services Consultant Work in the absence of proper notice required by the Professional Services Consultant Documents, the Professional Services Consultant then assumes all liability for such Professional Services Consultant Work, understands and agrees that the Professional Services Consultant will not be paid for such Professional Services Consultant Work, and agrees that the Authority is not obligated to compensate the Professional Services Consultant for such alleged change as a Cost of the Professional Services Consultant Work or as an addition to the GMP. The Authority reserves the right to reasonably amend this procedure in the event an electronic method is developed for these functions or a web-based project management system is utilized by the Authority.

**ARTICLE 8**

**[RESERVED]**

**ARTICLE 9**

**[RESERVED]**

## ARTICLE 10

### SUBCONTRACTS AND OTHER AGREEMENTS

- 10.1** Any Subcontractor that the Professional Services Consultant proposes to use to perform a part of the Professional Services Consultant Work shall be subject to the approval of the Authority, which shall not be unreasonably withheld.
- 10.2** Each Subcontract shall: (1) preserve and protect the rights of the Authority under this Professional Services Consultant Agreement with respect to the Professional Services Consultant Work to be performed under the Subcontract so that the subcontracting thereof will not prejudice such rights; (2) require the Subcontractor to represent and warrant that it is knowledgeable, to the extent required by the Subcontractor's portion of the Professional Services Consultant Work to be performed, of the Applicable Laws, NFL Rules and Regulations, and applicable codes, standards, rules and regulations applicable to a Project of this type in Minnesota and agree to comply with each of the foregoing; (3) require the Subcontractor to represent and warrant that it is experienced and fully qualified to perform the portion of the Professional Services Consultant Work contemplated to be performed by the Subcontractor; (4) require the Subcontractor to represent and warrant that it is properly licensed, certified, registered and organized to perform such Professional Services Consultant Work under Applicable Laws or any similar requirements in the State of Minnesota; (5) require the Subcontractor to assume toward the Professional Services Consultant and Authority all of the obligations and responsibilities that Professional Services Consultant by the terms of this Professional Services Consultant Agreement assumes toward the Authority; (6) require the Subcontractor to acknowledge and agree that the services performed by the Subcontractor are for the benefit of the Authority and Team and the Authority and Team shall have the right to enforce the obligations, responsibilities, and duties of the Subcontractor directly against the Subcontractor; (7) require the Subcontractor to name the Authority and Team as an intended third-party beneficiary to the duties, requirements and obligations of the Subcontractor; (8) require the Subcontractor to acknowledge that the Subcontractor shall have no direct claim, right or cause of action against the Authority or Team by virtue of its third-party beneficiary status; (9) include a provision allowing the Professional Services Consultant to assign the Subcontract to the Authority, a Lender, the Team, the Construction Manager, or any of the foregoing parties' designees without the Subcontractor's consent or change in the contract price or other terms of compensation; (10) require that such Professional Services Consultant Work be

performed in strict accordance with the requirements of the Professional Services Consultant Documents; (11) require a waiver of all Claims for additional costs or damages for delays with respect to subcontracted portions of the Professional Services Consultant Work unless notice for such Claims is provided pursuant to the Professional Services Consultant Documents and agreed in writing by the Professional Services Consultant and Authority before the work that is the subject of the Claim commences; (12) waive all rights the contracting parties may have against one another for damages caused by fire or other perils to the extent covered by the property insurance specified in the Professional Services Consultant Documents; (13) obligate each Subcontractor specifically to consent to all of the terms and conditions of this Professional Services Consultant Agreement; (14) require that each Subcontractor agree to indemnify and hold harmless the Authority and all Indemnitees for any and all claims, damages, losses and expenses, including, but not limited to attorney fees, arising out of or resulting from Subcontractor's negligence or breach of Subcontract; and (15) require each Subcontractor to purchase insurance naming the Authority and all Indemnitees as additional insureds to the fullest extent allowed by Applicable Law and such insurance be provided to Authority prior to any Subcontractor commencing any of the Professional Services Consultant Work. All insurance provided by any Subcontractor pursuant to this **Paragraph 10.2** shall be primary over and above any insurance provided by the Authority. The Professional Services Consultant shall require each Subcontractor to enter into similar agreements with all Sub-subcontractors and Suppliers. The Professional Services Consultant shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Professional Services Consultant Documents to which the Subcontractor will be bound.

**10.3** The Professional Services Consultant will be responsible for coordinating, scheduling, and integrating the Professional Services Consultant Work with the Work of the Construction Manager in accordance with the terms and conditions of the Contract Documents and the Professional Services Consultant Agreement and shall at all times cooperate with the Construction Manager. The Authority reserves the right to assign the rights and obligations of this Professional Services Consultant Agreement, in whole or in part, to the Construction Manager. Upon the assignment of the Professional Services Consultant Agreement to the Construction Manager, the Professional Services Consultant shall become a Subcontractor of the Construction Manager and shall be bound to the terms of the Construction Services Agreement insofar as they relate to the Professional Services Consultant's Work.

**10.4 [RESERVED]**

**10.5 [RESERVED]**

**10.6 [RESERVED]**

**10.7 [RESERVED]**

**10.8** The Professional Services Consultant shall comply with all Applicable Laws and any special requirements in the Contract Documents regarding equal employment opportunity, Targeted Business, and workforce participation initiatives.

**10.8.1** The Professional Services Consultant shall demonstrate good faith efforts to utilize minority (“**MBE**”) and women-owned (“**WBE**”) business enterprises (hereinafter referred to as “**Targeted Businesses**”). The Authority has retained the services of a Targeted Business Coordinator to assist with meeting Targeted Business and workforce participation goals. The Professional Services Consultant shall submit to the Authority a Targeted Business Enterprise Participation Plan within ten (10) calendar days after executing this Professional Services Consultant Agreement. The Authority requires that the Professional Services Consultant utilize good faith efforts to achieve the goals for MBE and WBE participation set forth in the Authority’s Equity Plan for the Professional Services Consultant Agreement. The Authority also requires that the Professional Services Consultant utilize good faith efforts to achieve the workforce participation goals for minority and women workers on the Project. The Professional Services Consultant shall utilize the Targeted Business Coordinator to the fullest extent possible to accomplish, among others, the following activities:

- .1 Identify the trades, services and suppliers needed for the Project.
- .2 Identify Targeted Businesses that have the resources and capabilities to participate in the Project.
- .3 Contact Targeted Businesses to solicit bids for work on the Project.
- .4 Certify currently uncertified but qualified companies as Targeted Businesses for participation in the Project.

- .5 Develop the Targeted Business Enterprise Participation Plan for submittal with any bid or proposal from a Subcontractor.
- .6 Track participation of Targeted Businesses.
- .7 Prepare Targeted Business participation reports required by the Authority.
- .8 Comply with workforce utilization requirements of the Authority's Equity Plan for the Professional Services Consultant Agreement, including requirements established pursuant to Section 17, subd.1 of the Act.

Professional Services Consultant's failure to use good faith efforts to achieve the Authority's Targeted Business participation goals or to follow the requirements of the Authority's Equity Plan for the Professional Services Consultant Agreement may result in delay or withholding of Professional Services Consultant's payments and the assessment of appropriate damages. The Authority's Equity Plan for the Professional Services Consultant Agreement is attached to this Professional Services Consultant Agreement as **Exhibit 7.**

## **10.9 Subcontractors and Suppliers**

**10.9.1** The Professional Services Consultant, as soon as practicable after execution of this Professional Services Consultant Agreement, and from time to time thereafter as required by the staging of the Work, shall furnish to the Authority, in writing, the names of the Persons the Professional Services Consultant proposes to engage as Subcontractors and Suppliers for the Professional Services Consultant Work.

## **ARTICLE 11**

### **PAYMENTS**

- 11.1** Based upon Applications for Payment submitted by the Professional Services Consultant and as approved by the Authority, the Authority shall make payment to the Professional Services Consultant as set forth in the General Conditions included as **Exhibit 6** hereto.
- 11.2** The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month, or as otherwise agreed to between the Authority and Professional Services Consultant in writing.
- 11.3** Provided that a Professional Services Consultant Application for Payment is approved for full or partial payment, the Authority shall make payment of the approved amount to the Professional Services Consultant not later than forty five (45) days after the Authority has approved Payment.
- 11.4** Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Professional Services Consultant and approved by the Authority in accordance with the Professional Services Consultant Documents. The Schedule of Values shall allocate the entire Professional Services Consultant Amount among the various portions of the Professional Services Consultant Work as required by the Authority. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Authority may require. The Schedule of Values, unless objected to by the Authority, shall be used as a basis for reviewing the Professional Services Consultant's Application for Payment. The Professional Services Consultant's Application for Payment will be rejected if the Schedule of Values is inconsistent between months or if the Schedule of Values is "front-end loaded" or otherwise unbalanced at the time the Professional Services Consultant Application for Payment is submitted.
- 11.5** The Professional Services Consultant Application for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Professional Services Consultant Application for Payment. The

percentage completion shall be the percentage of that portion of the Professional Services Consultant Work which has actually been completed.

**11.6** Subject to other provisions of the Professional Services Consultant Documents, the amount of each progress payment shall be computed as follows:

**11.6.1** Determine the portion of the Professional Services Consultant Amount properly allocable to completed Professional Services Consultant Work as determined by the Authority.

**11.6.2** Add that portion of the Professional Services Consultant Amount properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Professional Services Consultant Work, or, if approved in advance by the Authority, suitably stored off the Project Site at a location agreed upon in writing.

**11.6.3 [RESERVED]**

**11.6.4** Subtract retainage of five percent (5%). The Authority will in its discretion approve any deviation from this requirement.

**11.6.5 [RESERVED]**

**11.6.6** Subtract the aggregate of previous payments made by the Authority.

**11.6.7 [RESERVED]**

**11.6.8** Subtract amounts, if any, for which the Authority has reasonably withheld or denied a Professional Services Consultant Application for Payment as provided in the Contract Documents.

**11.7** Except with the Authority's prior written approval, payments to Subcontractors included in the Professional Services Consultant's Application for Payment shall not exceed an amount approved by the Authority for each Subcontractor.

**11.7.1 [RESERVED]**

**11.8** Except with the Authority's prior written approval, the Professional Services Consultant shall not authorize advance payments to Suppliers for materials that have not been delivered to and properly stored at the Project Site.

**11.9** In taking action on the Professional Services Consultant's Application for Payment, the Authority shall be entitled to rely on the accuracy and completeness of the information furnished by the Professional Services Consultant and shall not be deemed to represent that the Authority has made a detailed examination, audit or arithmetic verification of the documentation submitted by the Professional Services Consultant or other supporting data, that the Authority has made exhaustive or continuous on-site inspections, or that the Authority has made examinations to ascertain how or for what purposes the Professional Services Consultant has used amounts previously paid. If requested by the Authority, the Authority's accounting representative, acting in the sole interest of the Authority, will perform such examinations, audits and verifications.

**11.10** The Professional Services Consultant is required to certify that all amounts owed and requested under the Professional Services Consultant Application for Payment are due to the Professional Services Consultant, are accurate and correct, and that all of the Professional Services Consultant Work completed to the date of the Professional Services Consultant Application for Payment has been completed in accordance with the Professional Services Consultant Documents. The Professional Services Consultant will be responsible for any errors or inaccuracies in the Professional Services Consultant Application for Payment. The Professional Services Consultant, and all Subcontractors or other Persons included for payment under the Professional Services Consultant's Application for Payment, will be required to certify that there are no Claims outstanding for any of the Professional Services Consultant Work completed to the date of the Professional Services Consultant's Application for Payment except those Claims that are properly preserved in strict accordance with the Professional Services Consultant Documents.

**11.11** Notwithstanding the provisions of **Paragraph 11.10** and notwithstanding the wording of such certificates, the Professional Services Consultant shall ensure that each Subcontractor's Work has been satisfactorily performed pursuant to the Professional Services Consultant Documents pending the issuance of a final certificate of payment and the Professional Services Consultant shall be responsible for ensuring that the correction of errors or omissions in or Professional Services Consultant Work or Work not performed regardless of whether or not such errors or omissions were apparent when such certificates were issued

## ARTICLE 12

### FINAL PAYMENT

**12.1** Final payment shall be made by the Authority to the Professional Services Consultant when (1) the Professional Services Consultant has achieved Final Completion, except for the Professional Services Consultant's responsibility to correct its errors or omissions, or any defective or nonconforming Work, as provided in **Exhibit 6**, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment has been submitted by the Professional Services Consultant and reviewed by the Authority's accountants; and (3) a final Application for Payment has then been approved in writing by the Authority. The Authority shall make such final payment, including any remaining retainage, if all of the Professional Services Consultant's responsibilities have been satisfied (otherwise any remaining retainage shall be released upon satisfaction of all requirements) not more than ninety (90) days after approval by the Authority of the final Application for Payment, or as required by law. No final payment shall be issued until all final Contract Revisions have been issued and executed with each final Change Order and Professional Services Consultant has provided the Authority with a detailed list of all Claims that are still unresolved at the time final payment is requested.

**12.2** The amount of the final payment shall be calculated as follows:

**12.2.1** Take the Professional Services Consultant Amount.

**12.2.2** Subtract amounts that the Authority withholds in accordance with the General Conditions or other provisions of the Professional Services Consultant Documents.

**12.2.3** Subtract the aggregate of the previous payments made by the Authority.

**12.3 [RESERVED]**

**12.4 [RESERVED]**

## ARTICLE 13

### PROTECTION OF PERSONS AND PROPERTY

- 13.1** The Professional Services Consultant acknowledges and understands that the Authority has established safety of all Project Participants and employees involved in the Project as one of the major priorities for this Project. The Professional Services Consultant must emphasize the importance of safety and a safe working environment to all its employees and Subcontractors and Suppliers of all tiers. Project safety must never be compromised.
- 13.2** The Professional Services Consultant understands and agrees that the Construction Manager shall be responsible to the Authority for, and will initiate, maintain, and provide supervision of safety precautions and administer a comprehensive Project Safety Program in connection with the Project and that Professional Services Consultant shall be bound by and adhere to the Construction Manager's Project Safety Program. Furthermore, the Professional Services Consultant agrees that the Professional Services Consultant will include reasonable precautions for safety of: (1) its employees on the Project and other Persons who may be affected thereby; and (2) all Project Participants. The Professional Services Consultant will also take reasonable precautions for the protection of the Professional Services Consultant Work, third party materials and equipment stored on the Project site in accordance with the Professional Services Consultant's direction, and other property at or adjacent to the Project Site.
- 13.3** The Professional Services Consultant is responsible for developing and administering a project safety program for the Professional Services Consultant Work that addresses, at a minimum, all of the requirements in the Project Manual and the Construction Manager's Project Safety Program. The Professional Services Consultant will be responsible for the performance and actions of all Persons, including all members of the Project Team, involved in the Professional Services Consultant Work while present at the Project Site.
- 13.4** The Professional Services Consultant shall be bound by and adhere to the Construction Manager's Project Safety Program. The Construction Manager shall administer and manage the safety program. This will include review of the safety programs of the Professional Services Consultant. The Construction Manager shall monitor the establishment and execution of effective safety practices, as applicable

to the Professional Services Consultant Work, and compliance with all applicable regulatory and advisory agency construction safety standards. The Construction Manager's responsibility for review, monitoring and coordination of the Professional Services Consultant's safety programs shall not relieve the Professional Services Consultant from controlling its safety program. Notwithstanding the Construction Manager's safety obligations, the Professional Services Consultant shall also have controlling employer responsibility for the safety programs and precautions applicable to its own work and the activities of other work in areas designated as within the control of Professional Services Consultant.

## ARTICLE 14

### CHANGES IN THE PROFESSIONAL SERVICES CONSULTANT WORK

#### 14.1 Construction Services

**14.1.1** A Contract Revision related to the Professional Services Consultant Work is a written order signed by the Authority and Professional Services Consultant, and issued after execution of this Professional Services Consultant Agreement, stating their agreement with respect to a Change in the Work and which may include an adjustment in the Professional Services Consultant Amount, and/or the extent of the adjustment in Milestone Dates and the date required for Substantial Completion. The Contract Revision form that will be used on the Project is included as **Exhibit 11** hereto. Costs to the Authority resulting from a Change in the Work shall be determined in writing between the Authority and the Professional Services Consultant before issuance of any Contract Revision. The Professional Services Consultant shall not proceed with any Changes in the Professional Services Consultant Work either without a prior written authorization from the Authority, or if the Authority does not consider the Professional Services Consultant Work in question to be a Change in the Professional Services Consultant Work, then without a written notice of Claim as provided in **Paragraph 6.2** of **Exhibit 6** hereto. The Professional Services Consultant agrees that it will not be paid for and waives any Claim for payment associated with any alleged Change in the Professional Services Consultant Work or any Contract Revision unless the Professional Services Consultant fully complies with the terms of this **Article 14** and the notice of Claims provision in **Exhibit 6** hereto. The Professional Services Consultant further assumes any and all risks or liabilities associated with the Professional Services Consultant proceeding with any alleged Change to the Professional Services Consultant Work or any pending Contract Revision that is not administered, or preserved by a written notice of Claim, in strict accordance with the Professional Services Consultant Documents.

**14.1.2** A Change Order related to the Professional Services Consultant Work is a written order signed by the Professional Services Consultant and Subcontractor, and issued after execution of a Subcontract, authorizing a change in a Subcontract. Costs to the Authority resulting from a change in

any Subcontract must be approved in accordance with **Subparagraph 14.1.1** hereof before issuance of any Change Order to a Subcontractor. The Professional Services Consultant shall not proceed with any Changes in the Professional Services Consultant Work, including the Work of any Subcontractor or Supplier, without prior written authorization from the Authority. The Professional Services Consultant agrees that it will not be paid for and waive any Claim for payment associated with any alleged Change in the Professional Services Consultant Work or any pending Change Order unless the Professional Services Consultant fully complies with the terms of this **Article 14**. The Professional Services Consultant further assumes any and all risks or liabilities associated with the Professional Services Consultant proceeding with any alleged Change to the Professional Services Consultant Work or pending Change Order that is not administered in strict accordance with the Professional Services Consultant Documents.

**14.1.3** All Changes in the Professional Services Consultant Work must be administered under the requirements of this **Article 14** and **Exhibit 6** hereto.

**14.1.4** The provisions of the Professional Services Consultant Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by the Authority. No Person is authorized on behalf of the Authority to orally change, amend, waive, or otherwise modify the terms of the Professional Services Consultant Documents or any of the Professional Services Consultant's duties or obligations under or arising out of the Professional Services Consultant Documents. Any change, waiver, approval, or consent granted to the Professional Services Consultant shall be limited to the specific matters stated in writing signed by the Authority, and shall not relieve Professional Services Consultant of any other duties and obligations under the Professional Services Consultant Documents. No "constructive" changes shall be allowed unless preceded with a specific notice of Claim addressing the alleged constructive change at issue in strict accordance with **Subparagraph 6.2** of **Exhibit 6** hereto.

## **14.2 Regulatory Changes**

**14.2.1** The Professional Services Consultant shall be entitled to an equitable Contract Revision, where applicable, for Changes in the Professional Services Consultant Work necessitated by the enactment or revisions to Applicable Laws, which may be enacted from time to time after the execution of this

Professional Services Consultant Agreement. In such instances, if any, the Professional Services Consultant shall provide the Authority, in writing, the justification for such Changes in the Professional Services Consultant Work. At the time of execution of this Professional Services Consultant Agreement, the Professional Services Consultant is not aware of any regulatory changes that would necessitate a Change in the Professional Services Consultant Work.

## ARTICLE 15

### **CORRECTION OF WORK**

- 15.1** The Professional Services Consultant shall promptly give notice to the Authority of any defective or nonconforming Work of the Professional Services Consultant discovered during the term of this Professional Services Consultant Agreement and within a period of two (2) years from the Date of Substantial Completion of the Professional Services Consultant Work or designated portion thereof, or within such longer period provided by any applicable special or extended warranty.
- 15.2** The Professional Services Consultant shall be responsible to promptly make corrections in the Professional Services Consultant Work when the Professional Services Consultant's Work is found to be negligent, damaged, defective, or nonconforming with the Professional Services Consultant Documents. Corrections to the Professional Services Consultant Work that are not remedied within seven (7) days of delivery of a notice to the Professional Services Consultant, or sooner if deemed necessary by the Authority to maintain sequencing of the Professional Services Consultant Work or operation of any portion of the Project, may be completed by the Authority and back charged to the Professional Services Consultant, including all costs of administering such Professional Services Consultant Work without further notice to the Professional Services Consultant. Professional Services Consultant on its behalf and on behalf of its insurers, agents, and attorneys hereby waives any right to spoliation notice or right to be present during any work performed by the Authority pursuant to this provision. Costs associated with corrections of the Professional Services Consultant Work shall be borne by the Professional Services Consultant.
- 15.3** The Professional Services Consultant shall be responsible for all reasonable and direct costs of the Authority resulting from corrections in the Professional Services Consultant Work for which Professional Services Consultant is responsible and shall be further responsible for any Design Services which are caused or necessitated by errors, omissions, inconsistencies or other damages caused by the Professional Services Consultant and for which the Professional Services Consultant is responsible.

## ARTICLE 16

### INSURANCE, DISPUTE RESOLUTION, TERMINATION, AND INDEMNITY

#### 16.1 Insurance

**16.1.1** The Professional Services Consultant shall be required to purchase and maintain, at its own expense, the insurance coverages described in the Professional Services Consultant Documents and as specifically set for in **Article 13** of **Exhibit 6** hereto. Certificates of the Professional Services Consultant's insurance shall be made available to the Authority prior to execution of this Professional Services Consultant Agreement.

#### 16.1.2 [RESERVED]

#### 16.2 Dispute Resolution

**16.2.1** Claims, disputes, and other matters in question between the Parties to this Professional Services Consultant Agreement or related to the Professional Services Consultant Work and arising out of or relating to the formation or performance of this Professional Services Consultant Agreement or the Work shall be submitted and resolved as provided in **Paragraphs 6.2, 6.3** and **6.4** of **Exhibit 6** hereto.

**16.2.2** **Subparagraph 16.2.1** hereof shall survive completion or termination of this Professional Services Consultant Agreement.

#### 16.3 Termination by the Authority

**16.3.1** As provided more fully in **Article 16** of **Exhibit 6** hereto, the Authority shall have the right to suspend, terminate for cause, or terminate for convenience this Professional Services Consultant Agreement.

## **16.4 Termination by the Professional Services Consultant**

**16.4.1** The Professional Services Consultant shall have the right to suspend its performance of the Professional Services Consultant Work or terminate this Professional Services Consultant Agreement in accordance with **Article 16** of **Exhibit 6** hereto.

## **16.5 Indemnification**

**16.5.1** The Professional Services Consultant is required to indemnify, hold harmless and defend the Authority and all of the Indemnitees as specifically set for in **Paragraph 4.18** of **Exhibit 6** hereto.

## ARTICLE 17

### OTHER PROVISIONS

#### 17.1 Nondiscrimination

In connection with the performance of its Work, the Professional Services Consultant agrees not to illegally discriminate against any employee or applicant for employment for any reason, including: age, race, sex, national origin, ancestry, religion, or color. This provision shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. Nothing contained in this **Paragraph 17.1** shall be considered a limitation of the Authority's rights of termination pursuant to **Paragraph 16.4** hereof.

#### 17.2 Successors and Assigns

The Authority and Professional Services Consultant each bind themselves, their partners, successors, permitted assigns, and legal representatives to the other Party to this Professional Services Consultant Agreement and to the partners, successors, permitted assigns, and legal representative of such other Party with respect to covenants of this Professional Services Consultant Agreement.

**17.2.1** Notwithstanding anything to the contrary in this Professional Services Consultant Agreement, it is acknowledged and agreed that the Authority shall have the right to assign, in whole or in part, its rights and duties under this Professional Services Consultant Agreement without the consent of Professional Services Consultant to third parties including the Team, a Lender, and the Construction Manager. The Professional Services Consultant shall execute all consents reasonably required to facilitate such assignment. This Professional Services Consultant Agreement may not be assigned by Professional Services Consultant without the prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion.

### 17.3 Legal Relations

- 17.3.1** Nothing contained in this Professional Services Consultant Agreement shall create or is intended to create a contractual relationship with, or a cause of action in favor of, any third party against the Authority or any of the Indemnities. Notwithstanding the foregoing, the Parties hereto acknowledge and agree to the third party beneficiary rights established in **Paragraph 17.4** herein.
- 17.3.2** Should Professional Services Consultant have a Claim against a Person involved with the Project, other than the Persons described in this **Paragraph 17.3**, then the Professional Services Consultant shall make such Claim directly against such other Person and not against the Authority or any of the Indemnitees.
- 17.3.3** Professional Services Consultant agrees and acknowledges that the Act requires the Authority to bid project construction in a manner that any cost overruns are the responsibility of the successful Proposer and not the Authority or the State. Accordingly, Professional Services Consultant agrees and acknowledges that as the successful Proposer, Professional Services Consultant is solely responsible for any cost overruns that may occur on the Professional Services Consultant Work in excess of the Professional Services Consultant Amount as modified in accordance with and as allowed by the Professional Services Consultant Documents, however caused, as the Authority has no authority to accept liability for cost overruns in contravention of the Act. Therefore, notwithstanding anything to the contrary in this Professional Services Consultant Agreement except as provided in **Paragraph 4.3** hereof and **Subparagraph 10.3.1** of **Exhibit 6** hereto, to the fullest extent permitted by Applicable Law, Professional Services Consultant hereby waives any and all Claims against Authority and any of the Indemnitees arising from or relating to (1) the Architect's negligent acts, errors or omissions; (2) any implied or express warranty as to the completeness, constructability, accuracy, suitability, or timeliness of the completion of any Drawings, Specifications, or other Professional Services Consultant Documents; and (3) any other Claim the result of which would be to impose liability upon the Authority for a cost overrun in violation of the Act.

**17.3.4** The Professional Services Consultant expressly acknowledges that it is an independent contractor and that it is not the representative or agent of the Authority or Team. Nothing contained in this Professional Services Consultant Agreement shall be construed as constituting a joint venture or partnership between the Professional Services Consultant and the Authority or the Team. The Professional Services Consultant shall have the authority to act on behalf of the Authority only to the extent expressly provided in this Professional Services Consultant Agreement unless otherwise modified by a subsequent written instrument. Under no circumstances shall Professional Services Consultant contract, negotiate or make commitments concerning the Project with any Governmental Authority or other authority with jurisdiction over the Project without the Authority's prior written authorization. The Professional Services Consultant is not authorized to act on the Authority's behalf, and shall not act on the Authority's behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid to any Project Participant or other Persons, or (2) the time for completing any portion of the Project by any Project Participant, or (3) the scope of the Design Services or the Professional Services Consultant Work, unless such representation is specifically provided for, set forth and authorized in this Professional Services Consultant Agreement. The Authority will not assume, accept or ratify any obligation, commitment, responsibility or liability which may result from representation by the Professional Services Consultant not specifically provided for and authorized as stated in this Professional Services Consultant Agreement.

#### **17.4 Third Party Beneficiaries**

It is expressly agreed and understood that all of the Indemnitees are intended third party beneficiaries of all the representations, warranties and covenants made by the Professional Services Consultant in the Professional Services Consultant Documents, including without limitation the promises of the Professional Services Consultant to perform and complete the Professional Services Consultant Work. The rights of third party beneficiaries as described herein shall be consistent with the Professional Services Consultant Documents. The responsibilities and liabilities of the Professional Services Consultant toward such third party beneficiaries shall be consistent with the Professional Services Consultant Documents.

#### **17.5 Governing Law, Venue, and Jurisdiction**

The laws of the State of Minnesota, without giving any effect to conflicts of law provisions, shall govern and construe this Professional Services Consultant Agreement. Each Party to this Professional Services Consultant Agreement (1) agrees that except for those Claims or disputes which are subject to dispute resolution requirements set forth in this Professional Services Consultant Agreement, any suit, action, or other legal proceeding arising out of this Professional Services Consultant Agreement, any related agreements, or any of the transactions contemplated hereby or thereby shall be brought in the courts of the State of Minnesota, Fourth Judicial District, Hennepin County District Court; (2) consents to the jurisdiction of such court in any such suit, action, or proceeding; and (3) waives any objection which it may have to the venue of any such suit, action, or proceeding in such court.

#### **17.6 Time is of the Essence**

Time is of the essence with respect to this Professional Services Consultant Agreement and the performance of obligations hereunder.

#### **17.7 Lender Approval**

The Professional Services Consultant hereby acknowledges that the Authority may be required to provide this Professional Services Consultant Agreement to the Team's lender(s) for review and approval. The Professional Services Consultant agrees to modify the terms and conditions of this Professional Services Consultant Agreement as may be reasonably requested by the Authority to satisfy the requirements of the Team's lender(s), so long as any such modification does not materially increase the Professional Services Consultant's risk or obligations under the Professional Services Consultant Documents as may be determined by the Authority in its discretion.

#### **17.8 Professional Services Consultant Performance**

The Professional Services Consultant understands and agrees that the Authority retains, at its choice, any and all rights under law and under this Professional Services Consultant Agreement, including injunctive relief, specific performance, and the right to recover damages against the Professional Services Consultant caused directly or indirectly by the Professional Services Consultant's breach of the Professional Services Consultant Agreement.

### **17.9 Payment Bond**

Not required

### **17.10 Performance Bond**

Not required.

### **17.11 Warranty**

The Professional Services Consultant's Warranty is included herein as **Exhibit 10**.

### **17.12 Environmental and Other Responsibilities**

The Professional Services Consultant is responsible to administer the Professional Services Consultant's Work in accordance with the Environmental and Other Responsibilities as outlined in **Exhibit 12** hereto.

### **17.13 Entire Agreement**

This Professional Services Consultant Agreement represents the entire agreement between the Authority and Professional Services Consultant and supersedes any prior negotiations, representations, promises, or agreements whether written or oral. This Professional Services Consultant Agreement may be amended only by written instrument signed by both Authority and the Professional Services Consultant.

### **17.14 Notice Provisions**

Every notice, demand, request, consent, approval, or other communication, including notice of breach, indemnity, suspension, termination, or default, that either Party hereto is required or desires to give or make to the other Party hereto shall, notwithstanding any other provisions of the Professional Services Consultant Agreement, be effective only if given in writing and delivered by hand and receipted for, or by registered or certified mail, postage-prepaid, return receipt requested, or by overnight mail as follows:

**17.14.1** If to the Construction Manager, addressed to:

M. A. Mortenson Company  
700 Meadow Lane North  
Minneapolis, Minnesota 55422  
Attention: John V. Wood  
Senior Vice President  
Fax: 763-287-5507

with a copy to:

M. A. Mortenson Company  
700 Meadow Lane North  
Minneapolis, Minnesota 55422  
Attention: Dwight Larson  
Vice President Senior Counsel  
Fax: 763-287-5224

Faegre Bakers Daniels  
2200 Wells Fargo Center  
90 S. Seventh Street  
Minneapolis, Minnesota 55402-3901  
Attention: Peter Halls  
Fax: 612-766-1600

with a copy to:

Each of the persons set forth in **Section 17.14.2.**

**17.14.2** If to the Authority, addressed to:

Metropolitan Sports Facility Authorities

511 11th Avenue South, Suite 401

Minneapolis, MN 55415

Attention: Ted Mondale

CEO/Executive Director

Fax: 612-332-8334

with a copy to: Dorsey & Whitney, LLP  
Suite 1500  
50 South Sixth Street  
Minneapolis, MN 55402-1498  
Attention: Jay L. Lindgren  
Fax: 612-340-2868

with a copy to: Fabyanske, Westra, Hart & Thomson, PA  
333 South Seventh Street, Suite 2600  
Minneapolis, MN 55402  
Attention: Dean B. Thomson  
Fax: 612-359-7602

with a copy to: Minnesota Vikings Football, LLC  
9520 Viking Drive  
Eden Prairie, MN 55344  
Attention: Kevin Warren  
Vice President of Legal Affairs &  
Chief Administrative Officer  
Fax No.: 952-828-6514

with a copy to: Briggs and Morgan  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Attention: Mike Grimes, and  
Matt Slaven  
Fax No.: 612-977-8650

**17.14.3** If to the Professional Services Consultant, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Or to such other address or addresses or via other means as Authority and Professional Services Consultant shall from time to time designate by written agreement and notice given and delivered as aforesaid.

**17.15** not used

**17.16** Professional Services Consultant agrees and acknowledges that the Project is a public project and the Project will be used for public purposes and all of the Professional Services Consultant Work hereunder is in furtherance of a public project.

**17.17 [RESERVED]**

**17.18 [RESERVED]**

**17.19** This Professional Services Consultant Agreement may be executed by the Authority and Professional Services Consultant separately in counterparts which, taken together, shall constitute one original. This Professional Services Consultant

Agreement may also be executed by signatures sent by facsimile or email (in .pdf format), or by electronic signatures, which shall be deemed to have the same force and effect as an original signature.

**17.20** The Authority shall demand and the Professional Services Consultant and its Subcontractors shall furnish to the Authority upon request copies of any or all payrolls no more than fourteen (14) days after the end of each pay period and said payrolls must contain all the data required by Minn. Stat. §177.30. At the request of the Authority, the Professional Services Consultant shall utilize the online LCPtracker for labor tracking reports. The Authority may also examine all records relating to wages paid to laborers or mechanics on work to which Minn. Stat. §§ 177.41 to 177.43 apply.

**17.21** The Professional Services Consultant shall keep strictly confidential all Confidential Information concerning and relating to the Project, in accordance with the requirements set forth in **Exhibit 6** hereto. The Professional Services Consultant, its officers, agents, owners, partners, employees, volunteers, and Subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Ch. 13 (the “**MGDPA**”) and all other Applicable Laws relating to data privacy or confidentiality, and as any of the same may be amended. The Professional Services Consultant agrees to defend, indemnify, and hold harmless the Indemnitees from and against any claims resulting from the unlawful disclosure and/or use of such protected data by the Professional Services Consultant or the officers, agents, owners, partners, employees, volunteers, assignees, or Subcontractors of the Professional Services Consultant, or other noncompliance with the requirements of this **Paragraph 17.21**. The Professional Services Consultant agrees to promptly notify the Authority and Team if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this **Paragraph 17.21** shall survive the cancellation, suspension or termination of this Professional Services Consultant Agreement.

**17.22 [RESERVED]**

**17.23 [RESERVED]**

**17.24 Minnesota False Claims Act (“FCA”).** Minnesota Statutes §§15C.01 *et seq.* are applicable to this Project, and claims under the FCA include payment applications,

Claims for additional Contract Time and increases to the Professional Services Consultant Amount, and certifications regarding the Equity Plan for the Project. The Authority considers that the application of and obligation to comply with the FCA not only flows down from the Professional Services Consultant to all its Subcontractors and Suppliers, but is also directly applicable to Subcontractors and Suppliers. The Professional Services Consultant shall provide in its Subcontracts and Purchase Orders that its Subcontractors and Suppliers shall comply with the FCA in regards to claims made against the Professional Services Consultant to the same extent that the Professional Services Consultant must comply with the FCA in regards to its claims made to the Authority, and that its Subcontractors and Suppliers shall defend and indemnify the Professional Services Consultant from any such claims.

**17.25 [RESERVED]**

**17.26 [RESERVED]**

[THIS SPACE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

**THIS PROFESSIONAL SERVICES CONSULTANT AGREEMENT** is entered into as of the day and year first written above.

**AUTHORITY:**

---

By: Michele Kelm-Helgen

Title: Its Chair

**AUTHORITY:**

---

By: Ted Mondale

Title: Its CEO/Executive Director

**PROFESSIONAL SERVICES CONSULTANT:**

---

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

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

---

## **EXHIBIT 1**

### **DESCRIPTION OF BASIC SERVICES**

---

The following Description of Basic Services is included in the Professional Services Consultant Agreement as **Exhibit 1**:

The Basic Services to be provided by the Professional Services Consultant and its Subcontractors, Suppliers, consultants and subconsultants of any tier and associated with the Professional Services Consultant's Work for the Project are described below, without limitation and will be performed by the Professional Services Consultant in accordance with the terms and conditions of the Professional Services Consultant Agreement.

It is the intention of this Professional Services Consultant Agreement that the Professional Services Consultant shall provide all work, services, labor, materials, and equipment to complete the Project in accordance with this Professional Services Consultant Agreement, including the Trade Construction Documents and all applicable legal requirements. The Services required to deliver the Project in such form include the following, all of which shall be Basic Services under this Professional Services Consultant Agreement.

#### **RESPONSIBILITIES**

##### **1.1 [RESERVED]**

---

**EXHIBIT 2**  
**[RESERVED]**

---

**Exhibit 2** is reserved.

---

**EXHIBIT 3**  
**PROFESSIONAL SERVICES CONSULTANT AMOUNT**

---

**Exhibit 3** is reserved.

---

**EXHIBIT 4**

**MASTER PROJECT SCHEDULE**

---

The Professional Services Consultant shall perform its Professional Services Consultant Work expeditiously and consistent with its contractual obligations to further the orderly progress of the Professional Services Consultant Work. The Professional Services Consultant's Work shall be commenced on the date hereof, and, subject to authorized adjustments and excusable delays as allowed by **Paragraph 4.3**, Professional Services Consultant shall achieve Project Milestone Dates and Substantial Completion in accordance with this **Exhibit 4** of this Professional Services Consultant Agreement.

Final Completion of the Professional Services Consultant Work shall be deemed to have occurred only after completion of all the Professional Services Consultant Work and acceptance of it by the Authority.

The Date of Substantial Completion is described in more detail below:

**Substantial Completion**

---

[DATE OF SUBSTANTIAL COMPLETION FOR PROFESSIONAL SERVICES CONSULTANT WORK]Project Milestones Dates of the Professional Services Consultant Work that must be complete in accordance herewith are outlined on the Outline of Construction Schedule below. The following Outline of Construction Schedule highlights critical components of the Project and mandatory Milestone Dates that must be completed, without exception, by the Professional Services Consultant in order to meet the requirements of the Construction Schedule and Substantial Completion. The Parties hereto acknowledge and agree, in accordance with **Paragraph 4.10** of **Exhibit 6** to the Professional Services Consultant Agreement, that the Professional Services Consultant will undertake Extraordinary Measures if the Authority determines that the performance of the Professional Services Consultant Work has not progressed or reached the level of completion required by the Professional Services Consultant Documents.

**OUTLINE OF CONSTRUCTION SCHEDULE**

**PROJECT MILESTONE ACTIVITIES**

**COMPLETION DATE**

[INSERT]

[INSERT]

---

**EXHIBIT 5**  
**PROJECT STAFFING**

---

The following Project Staffing diagram is included in this Professional Services Consultant Agreement as **Exhibit 5**.

-----

**EXHIBIT 6**  
**GENERAL CONDITIONS**

----- (see  
**attachment)**

---

**EXHIBIT 7**  
**EQUITY PLAN**

---

**Exhibit 7** is attached.

---

**EXHIBIT 8**

**PROFESSIONAL SERVICES CONSULTANT PARENT OR JOINT VENTURE COMPANY GUARANTY**

---

The following Professional Services Consultant Parent or Joint Venture Company Guaranty is included in this Professional Services Consultant Agreement as **Exhibit 8**:

Reference is made to that certain Professional Services Consultant Agreement dated \_\_\_\_\_, as amended and modified from time to time ("**Professional Services Consultant Agreement**"), between \_\_\_\_\_ ("\_\_\_\_") and the Minnesota Sports Facilities Authority ("**Authority**"), which Professional Services Consultant Agreement provides for the construction of certain Professional Services Consultant Work at a professional sports Stadium and Stadium Infrastructure in Minneapolis, Minnesota. \_\_\_\_\_ is an Affiliate or Joint Venture Partner of \_\_\_\_\_ ("**Guarantor**"), and Guarantor has an interest in the completion of the Professional Services Consultant Agreement.

In consideration of the Professional Services Consultant Agreement, and such other and further good and valuable consideration, receipt of which Guarantor acknowledges, Guarantor hereby undertakes and guarantees to the Authority that \_\_\_\_\_ will fulfill its obligations to the Authority under the Professional Services Consultant Agreement and, if \_\_\_\_\_ does not do so, Guarantor hereby declares that it will perform those obligations as though they were its own, it being explicitly understood and agreed, however, that, notwithstanding any other provision contained in this Guarantee or at law or otherwise, under no circumstances shall Guarantor's liability or obligations hereunder exceed or be different from the liability or obligations of \_\_\_\_\_ under the Professional Services Consultant Agreement and that Guarantor's liability hereunder shall only become effective if, and to the extent that \_\_\_\_\_ has not fulfilled its obligations under the Professional Services Consultant Agreement.

Guarantor agrees that its liability under this Guarantee shall not be affected by any amendment, modification (including but not limited to Contract Revisions or Change Orders), extension or waiver of any of the terms of the Professional Services Consultant Agreement and that Guarantor's liability hereunder shall apply to the Professional Services Consultant Agreement as so amended, modified, or extended.

Guarantor agrees that its obligations under this Guarantee are irrevocable, independent and continuing, subject to the conditions and limitations stated herein and in the Professional Services Consultant Agreement. Subject to the provisions hereof, Guarantor shall satisfy its obligations hereunder in a timely manner in accordance with the obligations of \_\_\_\_\_ under the Professional Services Consultant Agreement after demand therefor is properly made in writing by the Authority, and such demand shall be conclusively deemed to have been effectually made if made, with necessary modification, in accordance with the notice provisions contained herein.

This Guarantee shall inure to the benefit of the Authority, its successors, and assigns and shall be binding upon Guarantor and its permitted successors and assigns. Nothing in this Guarantee, whether expressed or implied, is intended to confer upon any person other than the Authority and Guarantor, and their permitted successors and assigns, any rights or remedies of any nature or kind whatsoever. Guarantor shall not assign this Guarantee or its rights or obligations hereunder, whether by operation of law or otherwise, without the Authority's prior written consent.

Any notice, demand, document or other communication required or permitted to be given herein shall be in writing and shall be sufficiently given if delivered to the applicable Party at its address below, or if sent by international express mail or facsimile, addressed as follows:

To Authority:

Metropolitan Sports Facility Authorities

511 11th Avenue South, Suite 401

Minneapolis, MN 55415

Attention: Ted Mondale

CEO/Executive Director

Fax: 612-332-8334

with a copy to:

Minnesota Vikings Football, LLC

9520 Viking Drive

Eden Prairie, MN 55344

Attention: Kevin Warren  
Vice President of Legal Affairs &  
Chief Administrative Officer  
Fax No.: 952-828-6514

To Guarantor:

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Any such notice, if mailed, shall be deemed to have been given on the third day following such mailing or, if delivered, shall be effective on the day of delivery. Any notice sent by facsimile shall be deemed to have been given on the business day next following the date of transmission. For the purposes hereof, a "business day" shall be a day other than Saturday or Sunday and which is neither a statutory nor civil holiday in the state or province or country of the addressee. Each of the Authority and Guarantor shall be entitled to specify a different address by giving notice in accordance with the terms hereof to the other.

This Guarantee shall be governed by and construed in accordance with the same laws and definitions of terms that are applicable to the Professional Services Consultant Agreement. For the

purpose of this Guarantee, but for no further purpose, Guarantor hereby agrees to dispute resolution as more specifically provided for by the Professional Services Consultant Agreement.

\_\_\_\_\_

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

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

Date: \_\_\_\_\_

MINNESOTA SPORTS FACILITIES AUTHORITY

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

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

Date: \_\_\_\_\_

MINNESOTA SPORTS FACILITIES AUTHORITY

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

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

Date: \_\_\_\_\_

---

**EXHIBIT 9**

**BONDS**

---

Not Used

[INSERT]

---

**EXHIBIT 10**

**WARRANTY**

---

The following Warranty is included in this Professional Services Consultant Agreement as **Exhibit 10**:

**WARRANTY**

Pursuant to the Professional Services Consultant Agreement between the Minnesota Sports Facilities Authority (“**Authority**”) and [INSERT] (“**Professional Services Consultant**”), Professional Services Consultant hereby warrants and guarantees that all of the Professional Services Consultant Work performed under the Professional Services Consultant Agreement will be of new and of good quality, will be free of defects except for those inherent in the quality of the Professional Services Consultant Work allowed by the Professional Services Consultant Documents, and will conform to the requirements of the Professional Services Consultant Documents. If the Professional Services Consultant Work does not conform to this warranty, it shall be considered defective, and Professional Services Consultant shall remedy at its own expense any such defective Professional Services Consultant Work (including the costs that the Authority or Architect incur in dealing with or as a result of the defective Professional Services Consultant Work) so that the Professional Services Consultant Work conforms to the Professional Services Consultant Documents. The Professional Services Consultant’s warranty shall extend for a period of two (2) year after final acceptance by Authority. Where guarantees or warranties are required in the Professional Services Consultant Documents for a period of more than two (2) years, such longer terms shall apply. All Suppliers’ warranties and guarantees, express or implied, respecting any part of the Professional Services Consultant Work and any materials used therein are hereby assigned by the Professional Services Consultant to the Authority. This Warranty shall supplement, and not supersede, warranties and guarantees given by Professional Services Consultant under the terms of the Professional Services Consultant Documents.

PROFESSIONAL SERVICES CONSULTANT:

[INSERT]

WITNESS: \_\_\_\_\_

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

Date: \_\_\_\_\_

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day, personally appeared \_\_\_\_\_  
known to me to be the person whose name subscribed to the foregoing instrument, and  
acknowledged to me that he executed the same for the purposes and consideration therein  
expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_day of \_\_\_\_\_, 20\_\_.

---

NOTARY PUBLIC

---

SEAL

MY TERM EXPIRES

---

**EXHIBIT 11**

**CONTRACT REVISION AND CHANGE ORDER FORMS**

---

Forms that Professional Services Consultant must use to request Contract Revisions and Change Orders are included in the Professional Services Consultant Agreement as **Exhibit 11.**

---

**EXHIBIT 12**

**ENVIRONMENTAL AND OTHER RESPONSIBILITIES DURING CONSTRUCTION**

---

The Professional Services Consultant is responsible to administer and perform the Professional Services Consultant Work in accordance with the Environmental and Other Responsibilities During Construction as outlined in this **Exhibit 12**:

[INSERT]

---

## EXHIBIT 13 INSURANCE

---

The following Insurance requirements are included in this Professional Services Consultant Agreement as **Exhibit 6**:

### **INSURANCE AND INDEMNIFICATION**

Contractor agrees to provide and maintain at all times during which it is providing services and/or materials and/or equipment in connection with its performance under this Agreement, or is otherwise engaged in its performance under this Agreement, and, if applicable, for such additional period(s) of time as are required under Sections 2 and 4, below, such insurance coverages as are set forth in this Exhibit, and to otherwise comply with the provisions that follow.

Such insurance provisions shall also apply to all subcontractors engaged by Contractor with respect to its performance under this Agreement. Contractor shall be entirely responsible for securing the performance of all of its subcontractors with the insurance required of such subcontractors. Contractor shall not commence performance under this Agreement, nor shall Contractor allow any subcontractor to commence performance, until all insurance required of Contractor and/or each subcontractor is in effect, and satisfactory evidence thereof is provided to Owner, as set forth below.

1. **Workers' Compensation.** Contractor shall provide and maintain Workers' Compensation insurance in compliance with all applicable statutes. Such policy, or separate policy (if applicable), shall provide Employer's Liability coverage with limits of at least \$500,000. Coverage shall include Borrowed Servants, Alternate Employer Endorsement, Occupational Disease and Waiver of Subrogation in favor of the Minnesota Sports Facilities Authority, its employees officers, directors and commissioners.
  
2. **General Liability.** "Commercial General Liability Insurance" (Insurance Services Office policy form title), or equivalent policy form, with defense costs in addition to the limit of liability, providing coverage on an "occurrence", rather than on a "claims made" basis, the policy for

which shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability, (applying to this Agreement), Independent Contractors, and Products-Completed Operations liability. Contractor agrees to maintain at all times specified above a combined general liability policy limit of at least \$2,000,000 Each Occurrence applying to liability for Bodily Injury and Broad Form Property Damage, and a combined limit of at least the same amount applying to liability for Personal and Advertising Injury.

Contractor agrees to maintain Products-Completed Operations liability coverage continuously for a period of at least five (5) years following the final completion and acceptance of its performance under this Agreement, and shall, with respect to such Products-Completed Operations liability coverage, comply with the Additional Insured requirements of subsection 6, below, continuously throughout such five(5) year period.

3. Automobile Liability. Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, maintenance, operation, loading, unloading or other use of all owned, nonowned and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Agreement. Such policy shall provide a total liability limit for combined Bodily Injury and/or Property Damage in the amount of at least \$1,000,000 per accident, and shall include coverage for motor vehicle liability assumed under contract.

Professional Liability-Architects, Engineers, Design Professionals, and Fabricators shall also carry professional liability insurance in the amount of at least \$5,000,000 per claim. Coverage shall provide and extended reporting period of at least 5 years after completion and acceptance of its performance under this Agreement.

4. Limits. The minimum amount of liability insurance required hereunder may be satisfied by the limits afforded under Contractor's primary insurance policy(ies), or by such policy(ies) in combination with the limits afforded by an Umbrella or Excess Liability Policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability Policy is in all material respects at least as broad as that afforded by the underlying policy(ies), and further, that Owner and other parties are included as Additional Insureds thereunder, as set forth below.
5. Additional Insureds and Severability of Interests. Contractor's Commercial General Liability and Automobile Liability insurance policies shall include Owner, its members, directors,

officers, employees, commissioners and agents as Additional Insureds thereunder with respect to liability arising in connection with Contractor's performance under this Agreement. Both such policies shall prohibit insurer subrogation against Owner and all other Additional Insureds. Such policies shall each also include a standard Cross Liability endorsement a severability of interests (or "separation of insureds") provision. Contractor shall require any subcontractors it engages with respect to its performance under this Agreement to afford Owner and other parties described above similar Additional Insured status, and to similarly prohibit insurer subrogation against such Additional Insureds.

6. Primary Insurance. With respect to liability arising out of Contractor's performance under this Agreement, all insurance required of Contractor hereunder shall respond on a primary (not excess or contributory) basis with respect to any similar insurance maintained by Owner and/or any other party required to be included as an Additional Insured hereunder, notwithstanding any policy language to the contrary.
7. Responsibility for Liability Insurance Limits. It is understood and agreed that the liability insurance coverages and limits required under this Agreement are minimum requirements only and that, (a) Contractor will independently determine whether such coverages and limits are adequate to protect its interests, and (b) Owner will have no responsibility or liability whatsoever to Contractor for the inadequacy of any such coverages or limits to protect Contractor's interests.
8. Insurers. All policies of insurance required hereunder shall be issued by financially responsible insurers, and all such insurers must be acceptable to Owner. Such acceptance by Owner shall not be unreasonably withheld or delayed.
9. Evidence of Insurance. Prior to commencing any performance under this Agreement, Contractor shall provide Owner with evidence that the insurance coverage required hereunder is in full force and effect. In the event that any such insurance renews or is terminated during the course of Contractor's performance, Contractor shall promptly provide Owner with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of a standard Certificate of Insurance, shall include copies of the pertinent Additional Insured endorsements, and shall contain sufficient information to allow Owner to determine whether there is compliance with these provisions. All Certificates of Insurance shall require that the insurer provide at least 30 day notice to Owner prior to the effective date of policy cancellation, nonrenewal, or change that would result in noncompliance with the requirements of this Exhibit.

10. Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Contractor. Contractor hereby releases Owner, its members, officers, employees, agents and others acting on its behalf, from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's property or business interests caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of Owner or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.
  
11. Insurance Terms. Insurance terms not otherwise defined herein shall be interpreted consistent with insurance industry usage.
  
12. Governmental Limited Immunity – Notwithstanding anything to the contrary in this agreement, the Commission does not waive any statutory limited immunity from municipal tort liability available to it under Minnesota Statutes Chapter 466. Such statutory limited immunity shall apply whether an action, claim, demand or lawsuit is initiated by the User or by any third party.
  
13. Insurance Certificates – The Contractor shall provide prior to commencing the work, copies of insurance certificates (including showing the Owner as additional insured) to:

Minnesota Sports Facilities Authority

511 11<sup>th</sup> Ave So

Suite 401

Minneapolis, Mn. 55415

Attn. Mary Fox Stroman

**EXHIBIT F**

**REQUEST FOR PROPOSAL**

**Minnesota Multipurpose Stadium**

**TITLE:** 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems

<b>DATE ISSUED</b>	<b>SOLICITATION CLOSES</b>	<b>SOLICITATION NO.</b>	<b>COMMODITY CATEGORY</b>
February 26, 2015	<b>Date: March 19, 2015</b> <b>Time: 1:00 PM CDT</b>		

S H I P T O	Minnesota Multipurpose Stadium  TBD by Owner	B I L L T O	Minnesota Sports Facilities Authority  c/o – Accounts Payable  511 11 <sup>th</sup> Ave. South  Suite 401  Minneapolis, MN 55415  Phone: 612-335-3317  Fax: 612-332-8334
----------------------------	--	----------------------------	--

**SUBMIT PROPOSALS TO:**


MSFA

PROPOSAL – 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems

ATTN: STEVE MAKI

511 11<sup>TH</sup> AVE. SOUTH

MINNEAPOLIS, MN 555415

EMAIL: STEVE.MAKI@MSFA.COM

**FOR INFORMATION**

**EMAIL ALL**

**QUESTIONS TO:**

steve.maki@msfa.com

**ELECTRONIC BID PERMITTED:** YES Electronic bidding is permitted for items quoted that meet specs exactly. Any item not specifically called out in this Solicitation and bid by a vendor must be presented in hard copy with cut sheets and comparison of alternate to base spec. Electronic bids must be submitted to steve.maki@msfa.com. Facsimile transmissions are not acceptable.

**PROJECT DESCRIPTION/LOCATION**

The Minnesota Sports Facilities Authority seeks proposals for 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems to support the requirements of the STADIUM. The STADIUM will be operated by SMG and is a multifunction facility capable of hosting a variety of events including but not limited to NFL Football games, Concerts, Exhibitions, Meetings, etc.

**PROJECT TIMING**

The Proposal for 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems 1pm CDT March 19, 2015. Proposer should identify issues meeting delivery date in response.

Proposal shall be good for 90 days. Owner reserves the right to choose all or parts of proposals as per the best interest of the Minnesota Multipurpose Stadium and the Authority.

Site is under the jurisdiction of Mortenson Construction. As such the attached items listed below Addenda” will serve as a guide for the successful Proposer’s participation in the safety program and coordination on site in the completion of this project.

See **Exhibit G** Mortenson General Conditions

The scope of services shall be warranted for a period of at least two (2) year following final acceptance, unless otherwise stated in specifications, but the warranty will not be the Authority’s exclusive remedy.

Insurance requirements are to include but not limited to the following and naming the MSFA, SMG, and Mortenson Construction as additional insureds for ongoing and completed operations for a period of 12 years.

General Liability coverage of \$2,000,000 per occurrence, \$4, 000.000 aggregate

Excess Coverage of \$4,000,000

Automobile Liability coverage of \$1,000,000

Workers Compensation coverage to meet statutory limits

Employers Liability coverage of \$1,000,000

Professional E&O insurance of \$5,000,000 per Claim.

Certificates are required with submittals.

---

Proposers Notification	February 26, 2015
Proposal Due Date	1:00 PM CDT, March 19, 2015
Vendor Selection	On or around March 26, 2015

**Anticipated Delivery / Substantial Completion Date** **July 15, 2016**  
**Confirmation to follow with award**

- 
- 5.1** The Proposer shall include a Price Proposal detailing costs in an itemized format. At minimum, the pricing sheet(s) must show the price breakdowns as illustrated in the Pricing Sheet attached.
- 5.2** The Proposer shall describe any potential problems, which may impact the delivery date.
- 5.3** The Proposer shall include a minimum of three (3) references for comparable systems and installation efforts successfully performed by the Proposer within the last 18 months in similar projects.
- 5.4** Each Proposer is required to provide the following information in the amounts requested. Proposers who fail to provide any of the submittals requested will not be given consideration. Where this form and the specifications or other requirements of the RFP conflict, the Proposer shall provide the higher of quantity and better of quality.
- Submit one (1) copy of certificate of insurance as described above.
- 5.5** The Proposer shall forward four (4) copies of the Proposal to the following addresses no later than time and date specified in Article 4. Proposal must be signed and sealed by a corporate officer, general partner, sole proprietor, (as applicable) or other authorized signatory having the authority to commit the Proposer in full. Electronic submissions are acceptable but not required.

The Authority is acting as Agent for this procurement. Authority is the entity that will issue all purchase orders, contracts and receive invoices on behalf of the Stadium Project.. Payments with regards to this Solicitation will be made by the Authority directly to vendor.

The Authority **IS** tax exempt for this purchase of materials, and supplies.

Payment terms are Net 30 days from receipt of invoice only after acceptable delivery and receipt of item. All items will be check upon arrival to ensure each is in approved condition prior to payment.

Proposers shall submit one response per solicitation and shall not propose more than one price, model, and brand for each bid item on that solicitation. Should a Proposer desire to submit multiple or alternate proposals each should be submitted in a separate solicitation and marked "ALTERNATE PROPOSAL."

All Proposals shall include but not limited to all freight, installation (if necessary), travel, insurance, Bonding, copying, shipping and all incidentals etc.

It is the Proposers' responsibility to specifically address the variances to Specifications as laid out in the Solicitation. Any Alternate Proposal that does not provide line item specification variance explanation where needed will be rejected if deemed non-compliant to this section by the evaluation Committee.

### SUBSTITUTIONS

Should the proposer desire approval of some material or product other than that specified, it must submit a written request for approval of the substitute item in accordance with the following requirements:

1. Requests for approval of equals or substitutions must be made in writing and received by Authority at least five (5) working days prior to scheduled time for receipt of proposals. Requests for substitution will not be considered after Notice to Proceed.
2. All such requests must be made on the Substitution Request Form; see attached at end of this Section.
3. Any approval of the proposed equals or substitutions will be made by Addendum prior to receipt of proposals, and by duly executed Change Order after receipt of proposals. Proposers shall not rely upon any approval not incorporated into the Contract Documents in this matter.
4. Requests received after this time will not be reviewed or considered. No request for approval will be considered unless submitted in accordance with this Section.
5. Final decision as to whether an item is an equal or satisfactory substitution rests with Authority.
6. Clearly mark manufacturer's literature to indicate equality in performance and appearance.

### SUBSTITUTION REQUESTS

Every substitution request must state whether the item offered is an equal or equivalent to the specified product. The substitute material or product must be accompanied by its reference in the

Contract Documents and complete catalog, technical and other information, as appropriate. In addition to requirements indicated on the Substitution Request Form, comply with following:

1. As required, include samples showing comparison of physical and other pertinent characteristics as required to establish equivalence of acceptability for the proposed application.
2. Where specific test results are required by the Contract Documents, the comparison data for the proposed item shall be based upon the same test methods as those specified, or they shall be correlated to clearly demonstrate comparability.
3. The same guarantee/warranty described for the specified product is required for the substitution.
4. Coordination information, including a list of changes or modifications needed to other parts of the Work that will become necessary to accommodate the proposed substitution.
5. Cost information, including net change, if any.
6. Proposer shall accompany any request for substitution with such drawings, specifications, samples, manufacturer's literature, performance data, and other information necessary to describe and evaluate the proposed substitution completely. The burden of proof shall be on the Proposer.
7. As required, provide references of minimum of five (5) references for comparable systems and installation efforts successfully performed by the Proposer within the last 18 months where proposed substitute product has been used successfully, on a separate sheet, include names, addresses, date of installation and contact name of Owner of facilities manager.

**SUBSTITUTION REQUEST FORM**

<b>SUBMIT TO:</b>
<p>PROPOSAL – 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems</p> <p>SUBSTITUTION REQUEST</p> <p>ATTN: STEVE MAKI</p> <p>511 11<sup>TH</sup> AVE. SOUTH</p> <p>MINNEAPOLIS, MN 555415</p> <p>EMAIL: STEVE.MAKI@MSFA.COM</p>

**Relative Project:**

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

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Solicitation Number: \_\_\_\_\_

The undersigned request for consideration, the following product instead of the specified item for above Project:

**Proposed Substitution:** \_\_\_\_\_

---

**Reason for Substitution:** \_\_\_\_\_

---

***REQUIREMENTS FOR REQUEST TO BE CONSIDERED*** – *To support the substitution, provide product data, dimensional data, photographs, samples, performance and test data, and project references as necessary to evaluate the substitution request. In addition, a side-by-side matrix must be included of the specified criteria comparing it to the proposed substitution.*

**Submitted by:**

Proposer: \_\_\_\_\_

(Date) (Print Name of authorized officer) (Signature of authorized officer)

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name / Email: \_\_\_\_\_ / \_\_\_\_\_

Telephone / Fax #: \_\_\_\_\_ / \_\_\_\_\_

**EXHIBIT A - TECHNICAL SPECIFICATIONS**

---

I/we make the following Technical Specifications as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 90 days following receipt, and it may be accepted by the Authority without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 90-day period.
4. I/we understand that Authority or Team will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of Authority and Team, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
5. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
6. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
7. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Exhibit B - Pricing Sheet**

---

We propose to furnish all labor, materials, tools, equipment, transportation, licenses, services and incidentals necessary for 3<sup>rd</sup> Party Special Inspections – Smoke Control Systems in accordance with Plans & Specifications, for the price of:

TOTAL COST

(includes: travel, taxes, freight, installation, shipping, copying, and/or training cost etc.)

\$ \_\_\_\_\_

The undersigned hereby declares that it:

**Is thoroughly familiar with the provisions of the RFP documents and conditions at the Site, and has had the opportunity to receive and/or review all reference reports and documents related to Site conditions;**

1. Has the equipment, technical ability, experience references, personnel and facilities to properly complete, coordinate and administer the Contract, should it be awarded to it, in accordance with Contract Documents;
2. Is of the opinion that the Contract Documents are appropriate and adequate for the construction/completion of this Project;
3. Has the expertise and experience to perform the Work in conformance with the Contract Documents and requires no additional information.

Proposer: \_\_\_\_\_

(Print Name of authorized officer)      (Signature of authorized officer)      (Date)

Address: \_\_\_\_\_