
**TRADE CONTRACT AGREEMENT BETWEEN THE
MINNESOTA SPORTS FACILITIES AUTHORITY
AND THE TRADE CONTRACTOR**

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**TRADE CONTRACT AGREEMENT BETWEEN THE
MINNESOTA SPORTS FACILITIES AUTHORITY
AND THE TRADE CONTRACTOR**

TRADE CONTRACT AGREEMENT

THIS TRADE CONTRACT AGREEMENT (“Trade Contract Agreement”) is made as of the ____ day of _____ in the year of 20__.

BY AND BETWEEN

The AUTHORITY:

MINNESOTA SPORTS FACILITIES AUTHORITY
511 11th Avenue South, Suite 401
Minneapolis, MN 55415

and the

TRADE CONTRACTOR:

For: Certain Trade Contractor Work.

For the following **PROJECT:** Stadium and Stadium Infrastructure at the Stadium Site.

TERMS AND CONDITIONS
OF
TRADE CONTRACT 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 Trade Contractor to provide and accomplish the Trade Contractor Work pursuant to the terms and conditions of this Trade Contract Agreement; and

WHEREAS, the Trade Contractor’s Work for the Project shall be provided by Persons lawfully licensed to perform such Work in the State of Minnesota; and

WHEREAS, the Trade Contractor 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 Trade Contract is exempted from said Project Labor Agreement; and

WHEREAS, the Trade Contractor represents that it will complete the Trade Contractor Work for the amount set forth in **Exhibit 3**, (“Trade Contract Amount”) and achieve Substantial Completion of the

Trade Contractor Work at or before the certified completion date for the Trade Contractor Work as set forth in **Exhibit 4** hereof; and

WHEREAS, the Trade Contractor is strictly responsible to coordinate the Trade Contractor 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 meet the Authority's objectives as stated herein; and

WHEREAS, the Parties desire to set forth the terms of their agreements in this Trade Contract 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 Trade Contractor 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 Trade Contract Agreement.
- 1.1.3 Exhibits 1 through 13 are attached to and are incorporated as part of this Trade Contract Agreement for all purposes, and their terms apply to and obligate the Trade Contractor as if fully set forth herein.
- 1.1.4 [RESERVED]

1.2 Execution, Correlation and Intent

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

1.3 Trade Contractor's Authorized Representatives

The Trade Contractor's representative authorized to act on behalf of the Trade Contractor with respect to the Project is _____, or his/her successor designated in writing and approved by the Authority.

- 1.3.1 **Trade Contractor's Key Personnel.** The Trade Contractor'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 Trade Contractor's employ.

ARTICLE 2

TRADE CONTRACTOR'S RESPONSIBILITIES

2.1 Basic Services and Responsibilities

2.1.1 Construction Services

- .1 The Trade Contractor shall provide all services, work, labor, materials, equipment and other necessary payments as are required to complete the Trade Contractor Work as set forth in the Trade Contract Documents (collectively, “**Basic Services**”) as are set forth on Exhibit 1. The Trade Contractor Work is intended to be inclusive of all construction, services, work, labor, materials, engineering, testing, tools, supplies, facilities, management, supervision, hoisting and equipment required by, or reasonably inferable from, the Trade Contract Documents necessary to complete the Trade Contractor Work pursuant to the Construction Schedule for the Trade Contract Amount.
- .2 The Trade Contractor Work is more completely described in the Trade Contract Documents, including all of the Trade Contractor Work as defined in the Exhibits hereto.
- .3 The Trade Contractor Work consists of those services performed by the Trade Contractor, its employees, Subcontractors, Suppliers, and Sub-subcontractors of all tiers. The Trade Contractor is solely and strictly responsible for the performance of all Persons performing the Trade Contract Work, including Subcontractors, Suppliers, and Sub-subcontractors of all tiers. It is the responsibility of the Trade Contractor to ensure that all Subcontractors and Suppliers, including Sub-subcontractors at every tier, that is performing any portion of the Trade Contractor Work are familiar with all the terms and conditions of this Trade Contract Agreement and the Trade Contract Documents and that their performance is in accordance therewith.
- .4 The Trade Contractor is responsible to complete the Trade Contractor Work in strict accordance with the Trade Contract Documents. In the event the Trade Contractor undertakes construction activities, the Trade Contractor shall continually inspect its Trade Contract Work. The Trade Contractor 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 Trade Contractor 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 Trade Contractor shall be solely responsible for the means, methods, techniques, and sequences it chooses to perform the Trade Contractor Work and shall ensure that when finished, the Trade Contractor Work complies completely with the Trade Contract Documents. No inspection or approval by others, including the Authority, Team, Architect, Trade Contractor, and/or any Project Participant or Governmental Authority, shall relieve the Trade Contractor from this responsibility. The Trade Contractor shall supervise and direct the Trade Contractor 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 Trade Contractor shall be responsible for the safe and complete performance of all of its Subcontractors, Suppliers, and Sub-Subcontractors of every tier.

.6 [RESERVED]

2.2 Additional Services

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

2.2.2 Neither the Authority nor Trade Contractor anticipates any Additional Services at the time this Trade Contract 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 Trade Contractor.
- 3.3** **[RESERVED]**
- 3.4** The Authority shall fully cooperate with the Trade Contractor who shall be responsible to secure and pay for all building and other permits, licenses, and inspections necessary for the Trade Contract Work.
- 3.5** The Authority shall furnish the services of land surveyors or geotechnical engineers and other consultants for subsoil, air, and water conditions or other professional consultants when such services are deemed necessary by the Authority to properly carry out the Trade Contractor Work and only after such services are agreed to by the Authority. The Authority shall furnish, directly or through the Architect, structural, mechanical, chemical, geotechnical, and other laboratory or on-site testing and reports to the extent set forth in the Trade Contract Documents and as required by Applicable Laws.
- 3.6** Other than as stated in **Paragraph 3.5** above, the Authority or Indemnitees shall not be responsible for inspecting or testing any portion or progress of the Trade Contract Work, and any tests or inspections performed by the Authority, the Architect, an Indemnitee, or any of their agents shall not relieve the Trade Contractor from properly and timely performing the Trade Contractor 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 Trade Contract Work, notwithstanding any of the rights and authority granted the Authority and Indemnitees in the Trade Contract Documents.

ARTICLE 4

CONTRACT TIME

- 4.1** The Trade Contractor shall perform the Trade Contractor Work expeditiously, efficiently, and safely in accordance with the Construction Schedule. The Trade Contractor shall commence its Trade Contractor Work promptly and, subject to adjustment in accordance with and allowed by the Trade Contract Documents, Trade Contractor shall achieve the Milestones and Substantial Completion of the Trade Contractor Work within the time frames specifically described in Exhibit 4 hereof. The Trade Contractor shall be considered to have achieved Final Completion only after the Trade Contractor completes all of the Trade Contractor Work and the Trade Contractor Work is accepted by the Authority.
- 4.2** [RESERVED]
- 4.3** If the Trade Contractor is delayed in the progress of the Trade Contractor Work by events of Force Majeure, fire or other property damage not caused by the Trade Contractor or a Subcontractor, Supplier, Sub-subcontractor of any tier, or other Person for whom Trade Contractor is legally responsible, unusually severe weather conditions not customarily encountered in the area surrounding the Project which affect the scheduled progress of the Trade Contractor Work, or any other cause for which the Trade Contractor 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 Trade Contract Agreement, the Trade Contractor agrees that, regardless of the cause of delay and whether or not any extension of Contract Time may be granted therefore, Trade Contractor 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 Trade Contractor fails to comply, Trade Contractor shall be deemed to have waived the Claim to the extent that proper mitigation would have shortened the period of delay.
- 4.5** The Trade Contractor shall recommend to the Authority and Construction Manager a schedule for procurement of long lead-time items, which will constitute part of the Work as required to meet the Milestone Dates in the Construction Schedule and the Date of Substantial Completion. The Trade Contractor agrees that this Trade Contract Agreement may be assigned, in whole or in part, by the Authority to the Construction Manager or others. The Trade Contractor shall cooperate with the Construction Manager to expedite the delivery of long lead-time items to be provided by the Trade Contractor pursuant to this Trade Contract Agreement.

ARTICLE 5

TRADE CONTRACT AMOUNT AND GUARANTY

- 5.1** The Trade Contract 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 Trade Contract Agreement, the Trade Contractor absolutely and unconditionally guarantees to the Authority and the Indemnitees that all of the Trade Contractor Work under this Trade Contract Agreement will be performed and completed in accordance with the Trade Contract Documents and will not be defectively designed, fabricated or constructed. The Trade Contractor shall pay to the Authority all costs incurred, including reasonable attorney fees, in enforcing the performance and payment of this guaranty. If the Trade Contractor is an Affiliate of another parent entity or Person, or if the Trade Contractor 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 Trade Contract Agreement. Trade discounts, rebates, refunds, and amounts received from sales of surplus material and equipment shall accrue to the Authority. The Trade Contractor 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 Trade Contractor shall not obtain for its own benefit any discounts, rebates, or refunds in connection with the Trade Contractor 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 Trade Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Trade Contract 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 Trade Contractor 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 Trade Contractor's right to payment under and the Trade Contractor's compliance with the terms and conditions of this Trade Contract Agreement, and the Trade Contractor 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 Trade Contractor 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 Trade Contract Agreement. All records shall be maintained in accordance with Generally Accepted Accounting Procedures, consistently applied. Subcontractors retained by the Trade Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Trade Contractor under this **Article 7**. In addition to all other rights under the Trade Contract Documents, the Authority and Team representatives shall have the right to conduct full and complete audits of the Trade Contractor with respect to the Trade Contractor Work and also to the extent relating to the Trade Contractor's right to payment under and the Trade Contractor's compliance with the terms and conditions of this Trade Contract Agreement. If any inspection by the Authority or Team of the Trade Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Trade Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment, the Trade Contractor 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 Trade Contract Agreement or Final Completion.
- 7.2** The Trade Contractor shall provide the Authority and Team copies of all documents and records associated with the Work that the Authority or Team deem necessary. The Trade Contractor 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 Trade Contractor will strictly enforce this requirement.
- 7.3** The Trade Contractor 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 Trade Contractor Work must be approved in strict accordance with the requirements of the Trade Contract Documents. No change in the Trade Contractor Work, in any form, will be approved for payment without the Trade Contractor 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 Trade Contractor Work. The Authority will administer a Pending Change Report to identify and track any and all potential changes in the Trade Contractor Work, and the Trade Contractor 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 Trade Contractor with written authorization to proceed with commencing changes to the Trade Contractor Work. The Trade Contractor 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 Trade Contract Documents and to provide projected cost impacts within five (5) days of notification of such change. The Trade Contractor 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 Trade Contractor performs any alleged change in the Trade Contractor Work in the absence of proper notice required by the Trade Contract Documents, the Trade Contractor then assumes all liability for such Trade Contractor Work, understands and agrees that the Trade Contractor will not be paid for such Trade Contractor Work, and agrees that the Authority is not obligated to compensate the Trade Contractor for such alleged change as a Cost of the Trade Contractor 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 Trade Contractor proposes to use to perform a part of the Trade Contractor 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 Trade Contract Agreement with respect to the Trade Contractor 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor Work under Applicable Laws or any similar requirements in the State of Minnesota; (5) require the Subcontractor to assume toward the Trade Contractor and Authority all of the obligations and responsibilities that Trade Contractor by the terms of this Trade Contract 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 Trade Contractor 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 Trade Contractor Work be performed in strict accordance with the requirements of the Trade Contract Documents; (11) require a waiver of all Claims for additional costs or damages for delays with respect to subcontracted portions of the Trade Contractor Work unless notice for such Claims is provided pursuant to the Trade Contract Documents and agreed in writing by the Trade Contractor 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 Trade Contract Documents; (13) obligate each Subcontractor specifically to consent to all of the terms and conditions of this Trade Contract 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 Trade Contractor 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 Trade Contractor shall require each Subcontractor to enter into similar agreements with all Sub-subcontractors and Suppliers. The Trade Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Trade Contract Documents to which the Subcontractor will be bound.
- 10.3** The Trade Contractor will be responsible for coordinating, scheduling, and integrating the Trade Contractor Work with the Work of the Construction Manager in accordance with the terms and

conditions of the Contract Documents and the Trade Contract Agreement and shall at all times cooperate with the Construction Manager. The Authority reserves the right to assign the rights and obligations of this Trade Contract Agreement, in whole or in part, to the Construction Manager. Upon the assignment of the Trade Contract Agreement to the Construction Manager, the Trade Contractor 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 Trade Contractor's Work.

10.4 [RESERVED]

10.5 [RESERVED]

10.6 [RESERVED]

10.7 [RESERVED]

10.8 The Trade Contractor 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 Trade Contractor 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 Trade Contractor shall submit to the Authority a Targeted Business Enterprise Participation Plan within ten (10) calendar days after executing this Trade Contract Agreement. The Authority requires that the Trade Contractor utilize good faith efforts to achieve the goals for MBE and WBE participation set forth in the Authority's Equity Plan for the Trade Contract Agreement. The Authority also requires that the Trade Contractor utilize good faith efforts to achieve the workforce participation goals for minority and women workers on the Project. The Trade Contractor shall utilize the Targeted Business Coordinator to the fullest extent possible to accomplish 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 Trade Contract Agreement, including requirements established pursuant to Section 17, subd.1 of the Act.

Trade Contractor'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 Trade Contract Agreement may result in delay or withholding of Trade Contractor's payments and the assessment of appropriate damages. The Authority's Equity Plan for the Trade Contract Agreement is attached to this Trade Contract Agreement as **Exhibit 7.**

10.9 Subcontractors and Suppliers

10.9.1 The Trade Contractor, as soon as practicable after execution of this Trade Contract 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 Trade Contractor proposes to engage as Subcontractors and Suppliers for the Trade Contractor Work.

ARTICLE 11

PAYMENTS

- 11.1** Based upon Applications for Payment submitted by the Trade Contractor and as approved by the Authority, the Authority shall make payment to the Trade Contractor 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 Trade Contractor in writing.
- 11.3** Provided that a Trade Contractor Application for Payment is approved for full or partial payment, the Authority shall make payment of the approved amount to the Trade Contractor 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 Trade Contractor and approved by the Authority in accordance with the Trade Contract Documents. The Schedule of Values shall allocate the entire Trade Contract Amount among the various portions of the Trade Contractor 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 Trade Contractor's Application for Payment. The Trade Contractor'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 Trade Contractor Application for Payment is submitted.
- 11.5** The Trade Contractor Application for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Trade Contractor Application for Payment. The percentage completion shall be the percentage of that portion of the Trade Contractor Work which has actually been completed.
- 11.6** Subject to other provisions of the Trade Contract Documents, the amount of each progress payment shall be computed as follows:
- 11.6.1** Determine the portion of the Trade Contract Amount properly allocable to completed Trade Contractor Work as determined by the Authority.
- 11.6.2** Add that portion of the Trade Contract Amount properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Trade Contractor 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 Trade Contractor 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 Trade Contractor'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 Trade Contractor 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 Trade Contractor's Application for Payment, the Authority shall be entitled to rely on the accuracy and completeness of the information furnished by the Trade Contractor 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor is required to certify that all amounts owed and requested under the Trade Contractor Application for Payment are due to the Trade Contractor, are accurate and correct, and that all of the Trade Contractor Work completed to the date of the Trade Contractor Application for Payment has been completed in accordance with the Trade Contract Documents. The Trade Contractor will be responsible for any errors or inaccuracies in the Trade Contractor Application for Payment. The Trade Contractor, and all Subcontractors or other Persons included for payment under the Trade Contractor's Application for Payment, will be required to certify that there are no Claims outstanding for any of the Trade Contractor Work completed to the date of the Trade Contractor's Application for Payment except those Claims that are properly preserved in strict accordance with the Trade Contract Documents.
- 11.11** Notwithstanding the provisions of **Paragraph 11.10** and notwithstanding the wording of such certificates, the Trade Contractor shall ensure that each Subcontractor's Work is satisfactory and in good order pursuant to the Trade Contract Documents pending the issuance of a final certificate of payment and the Trade Contractor shall be responsible for ensuring that the correction of defects or Trade Contractor Work not performed regardless of whether or not such defects were apparent when such certificates were issued

ARTICLE 12

FINAL PAYMENT

- 12.1** Final payment shall be made by the Authority to the Trade Contractor when (1) the Trade Contractor has achieved Final Completion, except for the Trade Contractor's responsibility to correct 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 Trade Contractor 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 Trade Contractor'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 Trade Contractor 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 Trade Contract Amount.
 - 12.2.2** Subtract amounts that the Authority withholds in accordance with the General Conditions or other provisions of the Trade Contract 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor shall be bound by and adhere to the Construction Manager's Project Safety Program. Furthermore, the Trade Contractor agrees that the Trade Contractor 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 Trade Contractor will also take reasonable precautions for the protection of the Trade Contractor Work, third party materials and equipment stored on the Project site in accordance with the Trade Contractor's direction, and other property at or adjacent to the Project Site.
- 13.3** The Trade Contractor is responsible for developing and administering a project safety program for the Trade Contractor Work that addresses, at a minimum, all of the requirements in the Project Manual and the Construction Manager's Project Safety Program. The Trade Contractor will be responsible for the performance and actions of all Persons, including all members of the Project Team, involved in the Trade Contractor Work while present at the Project Site.
- 13.4** The Trade Contractor 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 Trade Contractor. The Construction Manager shall monitor the establishment and execution of effective safety practices, as applicable to the Trade Contractor 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 Trade Contractor's safety programs shall not relieve the Trade Contractor from controlling its safety program. Notwithstanding the Construction Manager's safety obligations, the Trade Contractor 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 Trade Contractor.

ARTICLE 14

CHANGES IN THE TRADE CONTRACTOR WORK

14.1 Construction Services

14.1.1 A Contract Revision related to the Trade Contractor Work is a written order signed by the Authority and Trade Contractor, and issued after execution of this Trade Contract Agreement, stating their agreement with respect to a Change in the Work and which may include an adjustment in the Trade Contract 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 Trade Contractor before issuance of any Contract Revision. The Trade Contractor shall not proceed with any Changes in the Trade Contractor Work either without a prior written authorization from the Authority, or if the Authority does not consider the Trade Contractor Work in question to be a Change in the Trade Contractor Work, then without a written notice of Claim as provided in **Paragraph 6.2 of Exhibit 6** hereto. The Trade Contractor agrees that it will not be paid for and waives any Claim for payment associated with any alleged Change in the Trade Contractor Work or any Contract Revision unless the Trade Contractor fully complies with the terms of this **Article 14** and the notice of Claims provision in **Exhibit 6** hereto. The Trade Contractor further assumes any and all risks or liabilities associated with the Trade Contractor proceeding with any alleged Change to the Trade Contractor Work or any pending Contract Revision that is not administered, or preserved by a written notice of Claim, in strict accordance with the Trade Contract Documents.

14.1.2 A Change Order related to the Trade Contractor Work is a written order signed by the Trade Contractor 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 Trade Contractor shall not proceed with any Changes in the Trade Contractor Work, including the Work of any Subcontractor or Supplier, without prior written authorization from the Authority. The Trade Contractor agrees that it will not be paid for and waive any Claim for payment associated with any alleged Change in the Trade Contractor Work or any pending Change Order unless the Trade Contractor fully complies with the terms of this **Article 14**. The Trade Contractor further assumes any and all risks or liabilities associated with the Trade Contractor proceeding with any alleged Change to the Trade Contractor Work or pending Change Order that is not administered in strict accordance with the Trade Contract Documents.

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

14.1.4 The provisions of the Trade Contract 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 Trade Contract Documents or any of the Trade Contractor's duties or obligations under or arising out of the Trade Contract Documents. Any change, waiver, approval, or consent granted to the Trade Contractor shall be limited to the specific matters stated in writing signed by the Authority, and shall not relieve Trade Contractor of any other duties and obligations under the Trade Contract 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 Trade Contractor shall be entitled to an equitable Contract Revision, where applicable, for Changes in the Trade Contractor Work necessitated by the enactment or revisions to Applicable Laws, which may be enacted from time to time after the execution of this Trade Contract Agreement. In such instances, if any, the Trade Contractor shall provide the Authority, in writing, the justification for such Changes in the Trade Contractor Work. At the time of execution of this Trade Contract Agreement, the Trade Contractor is not aware of any regulatory changes that would necessitate a Change in the Trade Contractor Work.

ARTICLE 15

CORRECTION OF WORK

- 15.1** The Trade Contractor shall promptly give notice to the Authority of any defective or nonconforming Work of the Trade Contractor discovered during the term of this Trade Contract Agreement and within a period of two (2) years from the Date of Substantial Completion of the Trade Contractor Work or designated portion thereof, or within such longer period provided by any applicable special or extended warranty.
- 15.2** The Trade Contractor shall be responsible to promptly make corrections in the Trade Contractor Work when the Trade Contractor's Work is found to be damaged, defective, or nonconforming with the Trade Contract Documents. Corrections to the Trade Contractor Work that are not remedied within seven (7) days of delivery of a notice to the Trade Contractor, or sooner if deemed necessary by the Authority to maintain sequencing of the Trade Contractor Work or operation of any portion of the Project, may be completed by the Authority and back charged to the Trade Contractor, including all costs of administering such Trade Contractor Work without further notice to the Trade Contractor. Trade Contractor 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 Trade Contractor Work shall be borne by the Trade Contractor.
- 15.3** The Trade Contractor shall be responsible for all reasonable and direct costs of the Authority resulting from corrections in the Trade Contractor Work for which Trade Contractor 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 Trade Contractor and for which the Trade Contractor is responsible.

ARTICLE 16

INSURANCE, DISPUTE RESOLUTION, TERMINATION, AND INDEMNITY

16.1 Insurance

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

16.1.2 [RESERVED]

16.2 Dispute Resolution

16.2.1 Claims, disputes, and other matters in question between the Parties to this Trade Contract Agreement or related to the Trade Contractor Work and arising out of or relating to the formation or performance of this Trade Contract 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 Trade Contract 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 Trade Contract Agreement.

16.4 Termination by the Trade Contractor

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

16.5 Indemnification

16.5.1 The Trade Contractor 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 Trade Contractor 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 Trade Contractor each bind themselves, their partners, successors, permitted assigns, and legal representatives to the other Party to this Trade Contract Agreement and to the partners, successors, permitted assigns, and legal representative of such other Party with respect to covenants of this Trade Contract Agreement.

17.2.1 Notwithstanding anything to the contrary in this Trade Contract 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 Trade Contract Agreement without the consent of Trade Contractor to third parties including the Team, a Lender, and the Construction Manager. The Trade Contractor shall execute all consents reasonably required to facilitate such assignment. This Trade Contract Agreement may not be assigned by Trade Contractor 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 Trade Contract 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 Trade Contractor have a Claim against a Person involved with the Project, other than the Persons described in this **Paragraph 17.3**, then the Trade Contractor shall make such Claim directly against such other Person and not against the Authority or any of the Indemnitees.

17.3.3 Trade Contractor 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 bidder and not the Authority or the State. Accordingly, Trade Contractor agrees and acknowledges that as the successful bidder, Trade Contractor is solely responsible for any cost overruns that may occur on the Trade Contractor Work in excess of the Trade Contract Amount as modified in accordance with and as allowed by the Trade Contract 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 Trade Contract 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, Trade Contractor 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 Trade Contract 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 Trade Contractor 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 Trade Contract Agreement shall be construed as constituting a joint venture or partnership between the Trade Contractor and the Authority or the Team. The Trade Contractor shall have the authority to act on behalf of the Authority only to the extent expressly provided in this Trade Contract Agreement unless otherwise modified by a subsequent written instrument. Under no circumstances shall Trade Contractor 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 Trade Contractor 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 Trade Contractor Work, unless such representation is specifically provided for, set forth and authorized in this Trade Contract Agreement. The Authority will not assume, accept or ratify any obligation, commitment, responsibility or liability which may result from representation by the Trade Contractor not specifically provided for and authorized as stated in this Trade Contract 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 Trade Contractor in the Trade Contract Documents, including without limitation the promises of the Trade Contractor to perform and complete the Trade Contractor Work. The rights of third party beneficiaries as described herein shall be consistent with the Trade Contract Documents. The responsibilities and liabilities of the Trade Contractor toward such third party beneficiaries shall be consistent with the Trade Contract 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 Trade Contract Agreement. Each Party to this Trade Contract Agreement (1) agrees that except for those Claims or disputes which are subject to dispute resolution requirements set forth in this Trade Contract Agreement, any suit, action, or other legal proceeding arising out of this Trade Contract 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 Trade Contract Agreement and the performance of obligations hereunder.

17.7 Lender Approval

The Trade Contractor hereby acknowledges that the Authority may be required to provide this Trade Contract Agreement to the Team's lender(s) for review and approval. The Trade Contractor agrees to modify the terms and conditions of this Trade Contract 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 Trade Contractor's risk or obligations under the Trade Contract Documents as may be determined by the Authority in its discretion.

17.8 Trade Contractor Performance

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

17.9 Payment Bond

Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Trade Contractor is required to provide a Payment Bond in an amount equal to one-hundred percent (100%) of the Trade Contract Amount and in the form of Exhibit 9 hereto and from a surety or sureties acceptable to the Authority. If after the giving of the bond the Trade Contract Amount is increased, for any reason, the Authority may require additional bonds, the amount of which shall be not less than the amount of the increase in the Trade Contract Amount, and if the additional bonds are not furnished within ten (10) calendar days after demand, the Trade Contractor Work shall cease until the additional bonds are furnished.

17.10 Performance Bond

Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Trade Contractor is required to provide a Performance Bond in an amount equal to one-hundred percent (100%) of the Trade Contract Amount and in the form of Exhibit 9 hereto and from a surety or sureties acceptable to the Authority. If after the giving of the bond the Trade Contract Amount is increased, for any reason, the Authority may require additional bonds, the amount of which shall be not less than the amount of the increase in the Trade Contract Amount, and if the additional bonds are not furnished within ten (10) calendar days after demand, the Trade Contractor Work shall cease until the additional bonds are furnished.

17.11 Warranty

The Trade Contractor's Warranty is included herein as Exhibit 10.

17.12 Environmental and Other Responsibilities

The Trade Contractor is responsible to administer the Trade Contractor's Work in accordance with the Environmental and Other Responsibilities as outlined in Exhibit 12 hereto.

17.13 Entire Agreement

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

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 Trade Contract Agreement, be effective only if given in writing and delivered by hand and

received 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: Brian Wenger, Mike Grimes, and
Matt Slaven
Fax No.: 612-977-8650

17.14.3 If to the Trade Contractor, addressed to:

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

- 17.15** The Trade Contractor shall cooperate with efforts made by the Authority and other members of the Project Team to ensure that, to the extent practicable, steel used in the construction of the Stadium is American-made steel that is made from Minnesota iron ore. To the extent practicable, the Trade Contractor shall ensure that twenty five percent (25%) of other materials, supplies, and equipment used in the construction of the Trade Contractor Work are made or produced by Minnesota businesses.
- 17.16** Trade Contractor agrees and acknowledges that the Project is a public project and the Project will be used for public purposes and all of the Trade Contractor Work hereunder is in furtherance of a public project.
- 17.17** The Trade Contractor shall cooperate with efforts made by the Authority and other members of the Project Team to build the Stadium, to the extent practicable, so that it is eligible to receive the Leadership in Energy and Environmental Design (LEED) certification or the Green Building Initiatives Green Globes certification for environmental design.
- 17.18** [RESERVED]
- 17.19** This Trade Contract Agreement may be executed by the Authority and Trade Contractor separately in counterparts which, taken together, shall constitute one original. This Trade Contract 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 will, by subsequent Contract Revision, specifically state the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay once they are determined for this Project, and will incorporate into this Trade Contract Agreement the applicable wage determinations for Trade Contractor Work along with language to be provided by the commissioner of the state department of Labor and Industry that will notify the Trade Contractor and its Subcontractors of the applicability of Minn. Stat. §§177.41 to 177.44 to this Project. The Trade Contractor shall comply with prevailing wage requirements under Minn. Stat. §§ 177.41 to 177.43 or as otherwise required by the Trade Contract Documents or Applicable Laws. The Authority shall demand and

the Trade Contractor and its Subcontractors shall furnish to the Authority 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor, 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 Trade Contractor 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 Trade Contractor or the officers, agents, owners, partners, employees, volunteers, assignees, or Subcontractors of the Trade Contractor, or other noncompliance with the requirements of this **Paragraph 17.21**. The Trade Contractor 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 Trade Contract 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 Trade Contract 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 Trade Contractor to all its Subcontractors and Suppliers, but is also directly applicable to Subcontractors and Suppliers. The Trade Contractor 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 Trade Contractor to the same extent that the Trade Contractor 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 Trade Contractor from any such claims.

17.25 **Bond Capacity.** The Authority shall have a period of not less than sixty (60) days following execution of this Trade Contract Agreement to verify the Trade Contractor’s bonding capacity. The Trade Contractor shall use all commercially reasonable efforts to assist the Authority in its review and shall endeavor to cause its surety to cooperate with the Authority. If at the time the Trade Contractor is unable to provide the bonds required under **Paragraphs 17.9** and **17.10**, the Authority shall have the right to terminate this Trade Contract Agreement or to cause the Trade Contractor to form a joint venture capable of providing the bonds required under **Paragraphs 17.9** and **17.10**.

17.26 [RESERVED]

[THIS SPACE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

THIS TRADE CONTRACT 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

TRADE CONTRACTOR:

By: _____
Title: _____

EXHIBIT 1
DESCRIPTION OF BASIC SERVICES

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

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

It is the intention of this Trade Contract Agreement that the Trade Contractor shall provide all work, services, labor, materials, and equipment to complete the Project in accordance with this Trade Contract 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 Trade Contract Agreement.

RESPONSIBILITIES

1.1 [RESERVED]

EXHIBIT 2
[RESERVED]

Exhibit 2 is reserved.

EXHIBIT 3
TRADE CONTRACT AMOUNT

Exhibit 3 is reserved.

EXHIBIT 4
MASTER PROJECT SCHEDULE

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

Final Completion of the Trade Contractor Work shall be deemed to have occurred only after completion of all the Trade Contractor 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 TRADE CONTRACTOR WORK]

Project Milestones Dates of the Trade Contractor 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 Trade Contractor 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 Trade Contract Agreement, that the Trade Contractor will undertake Extraordinary Measures if the Authority determines that the performance of the Trade Contractor Work has not progressed or reached the level of completion required by the Trade Contract 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 Trade Contract Agreement as **Exhibit 5**.

EXHIBIT 6
GENERAL CONDITIONS

The following General Conditions are included in this Trade Contract 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 \$25,000,000 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 two (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 two (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 Governmental Limited Immunity - Notwithstanding anything to the contrary in this 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 11th Ave So
Suite 401
Minneapolis, Mn. 55415
Attn. Mary Fox Stroman

**EXHIBIT 7
EQUITY PLAN**

Exhibit 7 is attached.

EXHIBIT 8
TRADE CONTRACTOR PARENT OR JOINT VENTURE COMPANY GUARANTY

The following Trade Contractor Parent or Joint Venture Company Guaranty is included in this Trade Contract Agreement as **Exhibit 8**:

Reference is made to that certain Trade Contract Agreement dated _____, as amended and modified from time to time (“**Trade Contract Agreement**”), between _____ (“_____”) and the Minnesota Sports Facilities Authority (“**Authority**”), which Trade Contract Agreement provides for the construction of certain Trade Contractor 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 Trade Contract Agreement.

In consideration of the Trade Contract 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 Trade Contract 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 Trade Contract Agreement and that Guarantor’s liability hereunder shall only become effective if, and to the extent that _____ has not fulfilled its obligations under the Trade Contract 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 Trade Contract Agreement and that Guarantor’s liability hereunder shall apply to the Trade Contract 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 Trade Contract Agreement. Subject to the provisions hereof, Guarantor shall satisfy its obligations hereunder in a timely manner in accordance with the obligations of _____ under the Trade Contract 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 Trade Contract 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 Trade Contract Agreement.

By: _____

Its: _____

Date: _____

MINNESOTA SPORTS FACILITIES AUTHORITY

By: _____

Its: _____

Date: _____

MINNESOTA SPORTS FACILITIES AUTHORITY

By: _____

Its: _____

Date: _____

EXHIBIT 9
BONDS

The Payment and Performance Bond forms that the Trade Contractor is required to provide are included in this Trade Contract Agreement as **Exhibit 9**:

[INSERT]

**EXHIBIT 10
WARRANTY**

The following Warranty is included in this Trade Contract Agreement as **Exhibit 10**:

WARRANTY

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

TRADE CONTRACTOR:
[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 Trade Contractor must use to request Contract Revisions and Change Orders are included in the Trade Contract Agreement as **Exhibit 11.**

EXHIBIT 12
ENVIRONMENTAL AND OTHER RESPONSIBILITIES DURING CONSTRUCTION

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

[INSERT]