

**STATE OF MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES**

[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN ITALICS AND BRACKETS. PLEASE COMPLETE EVERY FIELD AND DELETE ALL INSTRUCTIONS INCLUDING THE BRACKETS.]

[DO NOT USE THIS CONTRACT FOR ARCHITECTURAL OR ENGINEERING DESIGN SERVICES. ARCHITECTURAL OR ENGINEERING DESIGN SERVICES MUST USE THE FACILITIES P/T MASTER CONTRACT OR AIA DOCUMENT B105, B101, OR B133.]

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]

FACILITIES PROFESSIONAL OR TECHNICAL SERVICES CONTRACT

Contract is specific for use by Finance/Facilities divisions

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of ***[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]***, (hereinafter Minnesota State), and ***[INSERT CONSULTANTCONSULTANT'S LEGAL NAME AND FULL ADDRESS]***, an independent consultant, not an employee of the State of Minnesota (hereinafter CONSULTANT).

WHEREAS, Minnesota State, pursuant to Minnesota Statutes Chapter 136F, is empowered to procure from time to time certain professional/technical services, and

WHEREAS, Minnesota State is in need of professional/technical services, and

WHEREAS, the CONSULTANT represents it is duly qualified and willing to perform the services set forth in this contract and

[DELETE THE FOLLOWING CLAUSES IF CONSULTANT IS NOT AN INDIVIDUAL. IF CONSULTANT IS AN INDIVIDUAL, THEY MUST BE INCLUDED.]

WHEREAS, the CONSULTANT represents that he / she is not a current state employee, and

WHEREAS, the CONSULTANT represents that he / she has not received an early separation incentive under Minnesota State Colleges and Universities Board Policy 4.11, Board Early Separation Incentive Program (BESI), during the one year post-separation period prior to the effective date of this contract.

NOW, THEREFORE, it is agreed:

1. **TERM OF CONTRACT.** This contract is effective on ***[INSERT FULL DATE (e.g., January 29, 2013)]*** or upon the date the final required signature is obtained by Minnesota State, whichever occurs later, and shall remain in effect until ***[INSERT FULL DATE (e.g., June 15, 2013)]*** or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. The CONSULTANT understands that no work should begin under this contract until all required signatures have been obtained and the CONSULTANT is notified to begin work by Minnesota State authorized representative.

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2. **CONSULTANT’S DUTIES. The CONSULTANT will:**

[PROVIDE SUFFICIENT DETAIL IN THE DUTIES SO THAT YOU CAN HOLD THE CONSULTANT ACCOUNTABLE FOR THIS WORK. DO THIS BY EITHER: 1) LISTING THE CONSULTANT’S DUTIES, DELIVERABLES, AND COMPLETION DATES WITH PRECISE DETAIL HERE OR 2) USING AN EXHIBIT THAT CONTAINS THE PRECISE DUTIES AND DELIVERABLES, NOT THE “PROPOSAL”. YOU MUST INDICATE THAT AN EXHIBIT IS INCORPORATED INTO THE CONTRACT, SUCH AS “Perform the duties specified in Exhibit A, which is attached and incorporated into this contract.”]

3. **CONSIDERATION AND TERMS OF PAYMENT.**

- a. Consideration for all services performed and goods or materials supplied by the CONSULTANT pursuant to this contract shall be paid by Minnesota State as follows:

Compensation of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS AND NUMBER OF HOURS, e.g, Fifty and 00/100 Dollars (\$50.00) for eighty (80) hours. EXPLAIN HOW THE CONSULTANT WILL BE PAID. EXAMPLES: “IN ACCORDANCE WITH THE BREAKDOWN OF COSTS AS SET FORTH BELOW.” IF DELIVERABLES CAN BE SUCCINCTLY DEFINED, IT IS GENERALLY PREFERABLE TO STRUCTURE PAYMENT BASED ON THE SUCCESSFUL COMPLETION AND ACCEPTANCE OF SPECIFIC TASKS OR DELIVERABLES.]*

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Architect and their sub-consultants in performance of this contract shall be included in the Architect’s fee for Basic Services. Fees to be paid by the Consultant for securing approval of authorities having jurisdiction over the Project, if applicable, shall be included as Reimbursable Expenses. Reimbursement is also allowed for Owner-requested documents when the Architect provides printing services.

The Total Reimbursable Expenses Encumbered in this Agreement shall not exceed a total amount of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS, e.g. Four Thousand One Hundred Twenty and 00/100 Dollars (\$4,120.00).]*

The **total obligation** of Minnesota State for all compensation and reimbursement to the CONSULTANT shall not **exceed *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS, e.g. Four Thousand One Hundred Twenty and 00/100 Dollars (\$4,120.00).]***

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Terms of Payment.

- i. Payment shall be made by Minnesota State promptly after the CONSULTANT’S presentation of invoices for services performed and acceptance of such services by Minnesota State authorized representative. All services provided by the CONSULTANT pursuant to this contract shall be performed to the satisfaction of Minnesota State, as determined at the sole discretion of its authorized representative, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The CONSULTANT shall not receive payment for work found by Minnesota State to be unsatisfactory or performed in violation of any applicable federal, state or local law, ordinance, rule or regulation. Invoices shall be presented by CONSULTANT according to the following schedule:

The invoice will be paid within 30 calendar days following the completion of all deliverables or receipt of payment invoice, whichever is later.

- ii. **[IF APPLICABLE, INSERT THIS CLAUSE.]** Payments are to be made from federal funds obtained by Minnesota State through Title _____ of the _____ Act of _____ (Public law and amendments thereto). If at any time such funds become unavailable, this contract shall be terminated immediately upon written notice of such fact by Minnesota State to the CONSULTANT. In the event of such termination, CONSULTANT shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- iii. Nonresident Aliens. Pursuant to 26 U.S.C. §1441, Minnesota State is required to withhold certain federal income taxes on the gross compensation paid to nonresident aliens, as defined by Internal Revenue Code §7701(b). Minnesota State will withhold all required taxes unless and until CONSULTANT submits documentation required by the Internal Revenue Service indicating that CONSULTANT is a resident of a country with tax treaty benefits. Minnesota State makes no representations regarding whether or to what extent tax treaty benefits are available to CONSULTANT. To the extent that Minnesota State does not withhold these taxes for any reason, CONSULTANT agrees to indemnify and hold Minnesota State harmless for any taxes owed and any interest or penalties assessed.

- 4. **AUTHORIZED REPRESENTATIVES.** All official notifications, including but not limited to, cancellation of this contract must be sent to the other party’s authorized representative.

- a. Minnesota State authorized representative for the purpose of administration of this contract is:

Name:
Address:
Telephone:
E-Mail:
Fax:

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Such representative shall have final authority for acceptance of the CONSULTANT'S services and, if such services are accepted as satisfactory, shall so certify on each invoice presented pursuant to Clause 3, paragraph b.

- b. The CONSULTANT'S authorized representative for the purpose of administration of this contract is:

Name: **[INSERT]**
Address: **[INSERT]**
Telephone: **[INSERT]**
E-Mail: **[INSERT]**

5. **CANCELLATION AND TERMINATION.**

- a. This contract may be canceled by Minnesota State at any time, with or without cause, upon thirty (30) days written notice to the CONSULTANT. In the event of such a cancellation, the CONSULTANT shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
- b. Termination for Insufficient Funding. Minnesota State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature or other funding source, or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the CONSULTANT within a reasonable time of Minnesota State receiving notice that sufficient funding is not available. Minnesota State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the CONSULTANT will be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed to the extent that funds are available. Minnesota State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature or other funding source not to appropriate funds.

6. **ASSIGNMENT.** The CONSULTANT shall neither assign nor transfer any rights or obligations under this contract without the prior written consent of Minnesota State.

7. **LIABILITY.** In the performance of this contract by CONSULTANT, or CONSULTANT'S agents or employees, the CONSULTANT must indemnify, save, and hold harmless Minnesota State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by Minnesota State, to the extent caused by the CONSULTANT's:
1. Intentional, willful, or negligent acts or omissions; or
 2. Actions that give rise to strict liability; or
 3. Breach of contract or warrant.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of Minnesota State sole negligence.

This clause shall not be construed to bar any legal remedies the CONSULTANT may have for Minnesota State failure to fulfill its obligations pursuant to this contract.

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8. **WORKERS' COMPENSATION.** The CONSULTANT certifies it is in compliance with Minnesota Statutes §176.181, subd. 2 pertaining to workers' compensation insurance coverage. The CONSULTANT'S employees and agents will not be considered Minnesota State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way Minnesota State obligation or responsibility.
9. **PUBLICITY.** Any publicity given to the program, publications, or services provided resulting from this contract, including, but not limited to, notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the CONSULTANT or its employees individually or jointly with others, or any subCONSULTANTS shall identify Minnesota State as the sponsoring agency and shall not be released prior to receiving the approval of Minnesota State authorized representative.
10. **MINNESOTA STATUTES §181.59.**

The CONSULTANT will comply with the provisions of Minnesota Statutes §181.59 which require:

Every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the CONSULTANT agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no CONSULTANT, material supplier, or vendor, shall, by reason or race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) that no CONSULTANT, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) that a violation of this section is a misdemeanor; and (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

11. **DATA DISCLOSURE.**

- a. As a condition of this contract, CONSULTANT is required by Minn. Stat. §270C.65 to provide a social security number, a federal tax identification number or Minnesota tax identification number. This information may be used in the enforcement of federal and state tax laws. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment of state obligations. Supplying these numbers could result in action to require CONSULTANT to file state tax returns and pay delinquent state tax liabilities. This contract will not be approved unless these numbers are provided.
- b. Independent CONSULTANTS. Minn. Stat. §256.998 requires Minnesota State to report the name, address and social security number of independent CONSULTANTS to the New Hire Reporting Center of the Minnesota Department of Human Services unless this Contract is for

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less than two months in duration with gross earnings of less than \$250.00 per month. This information may be used by state or local child support enforcement authorities in the enforcement of state and federal child support laws.

12. **GOVERNMENT DATA PRACTICES ACT.** The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The CONSULTANT and Minnesota State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by Minnesota State in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the CONSULTANT in accordance with this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the CONSULTANT or Minnesota State.

In the event the CONSULTANT receives a request to release the data referred to in this clause, the CONSULTANT must immediately notify Minnesota State. Minnesota State will give the CONSULTANT instructions concerning the release of the data to the requesting party before the data is released.

[IF THE SERVICES PROVIDED BY CONSULTANT INCLUDE ACCESS TO, STORAGE, OR TRANSMISSION OF EDUCATION RECORDS OR EDUCATION DATA, CONTACT THE OFFICE OF GENERAL COUNSEL FOR ADDITIONAL CONTRACT PROVISIONS REGARDING DATA SECURITY. IF YOU HAVE ANY OTHER PRIVACY CONCERNS ABOUT THIS CONTRACT, PLEASE CONTACT THE OFFICE OF GENERAL COUNSEL.]

13. **OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS.**

- a. Minnesota State shall own all rights, title and interest in all of the materials conceived or created by the CONSULTANT, or its employees or subCONSULTANTS, either individually or jointly with others and which arise out of the performance of this contract, created and paid for under this contract, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereinafter MATERIALS).

The CONSULTANT hereby assigns to Minnesota State all rights, title and interest to the MATERIALS. The CONSULTANT shall, upon request of Minnesota State, execute all papers and perform all other acts necessary to assist Minnesota State to obtain and register copyrights, patents or other forms of protection provided by law for the MATERIALS. The MATERIALS created under this contract by the CONSULTANT, its employees or subCONSULTANTS, individually or jointly with others, shall be considered “works made for hire” as defined by the United States Copyright Act. All of the MATERIALS, whether in paper, electronic, or other form, shall be remitted to Minnesota State by the CONSULTANT, its employees and any subCONSULTANTS, and the CONSULTANT shall not copy, reproduce, allow or cause to have the MATERIALS copied, reproduced or used for any purpose other than performance of the CONSULTANT’S obligations under this contract without the prior written consent of Minnesota State authorized representative.

- b. The CONSULTANT represents and warrants that MATERIALS produced or used under this contract do not and will not infringe upon any intellectual property rights of another, including, but not limited to, patents, copyrights, trade secrets, trade names, and service

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marks and names. The CONSULTANT shall indemnify and defend, to the extent permitted by the Attorney General, Minnesota State at the CONSULTANT'S expense from any action or claim brought against Minnesota State to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the intellectual property rights of another. The CONSULTANT shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in the CONSULTANT'S or Minnesota State opinion is likely to arise, the CONSULTANT shall, at Minnesota State discretion, either procure for Minnesota State the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

14. **ANTITRUST.** The CONSULTANT hereby assigns to the State of Minnesota any and all claims for overcharges as to goods or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States or the antitrust laws of the State of Minnesota.
15. **JURISDICTION AND VENUE.** This contract, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.
16. **AMENDMENTS.** Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.
17. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONSULTANT relevant to this contract shall be subject to examination by Minnesota State and the Legislative Auditor for a minimum of six (6) years from the end of the contract.
18. **SURVIVAL OF TERMS.** The following clauses survive the expiration, cancellation or termination of this contract: Liability; Publicity; Data Disclosure; Government Data Practices Act; Ownership Of Materials and Intellectual Property Rights; Jurisdiction and Venue; and State Audits.
19. **AFFIRMATIVE ACTION REQUIREMENTS FOR CONTRACTS IN EXCESS OF \$100,000.00 AND THE CONSULTANT HAS MORE THAN 40 FULL-TIME EMPLOYEES IN MINNESOTA OR ITS PRINCIPAL PLACE OF BUSINESS.**

[DELETE THIS CLAUSE IF THE TOTAL CONTRACT VALUE IS UNDER \$100,000.00 AND RENUMBER REMAINING CLAUSE IF APPLICABLE.]

Minnesota State intends to carry out its responsibility for requiring affirmative action by its CONSULTANTS.

- a. Covered Contracts and CONSULTANTS. If the contract exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00) and the CONSULTANT employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or

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- in the state where it has its principle place of business, then the CONSULTANT must comply with the requirements of Minnesota Statutes §363A.36 and Minnesota R. Parts 5000.3400-5000.3600. A CONSULTANT covered by Minnesota Statutes §363A.36 because it employed more than forty (40) full-time employees in another state and the CONSULTANT does not have a Certificate of Compliance, said CONSULTANT must certify that it is in compliance with federal affirmative action requirements.
- b. Minnesota Statutes §363A.36. Minnesota Statutes §363A.36 requires CONSULTANT to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (hereinafter COMMISSIONER) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
 - c. Minnesota R. 5000.3400-5000.3600.
 - i. General. Minnesota R. 5000.3400-5000.3600 implement Minnesota Statutes §363A.36. These rules include, but are not limited to: criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a CONSULTANT's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota R. 5000.3400-5000.3600, including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 - ii. Disabled Workers. The CONSULTANT must comply with the following affirmative action requirements for disabled workers.
 - A. The CONSULTANT must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONSULTANT agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - B. The CONSULTANT agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - C. In the event of the CONSULTANT'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes §363A.36, and the rules and relevant orders of the

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Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

D. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner of the Minnesota Department of Human Rights. Such notices must state the CONSULTANT'S obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

E. The CONSULTANT must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONSULTANT is bound by the terms of Minnesota Statutes §363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

iii. Consequences. The consequences for the CONSULTANT'S failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the COMMISSIONER, refusal by the COMMISSIONER to approve subsequent plans, and termination of all or part of this contract by the COMMISSIONER or Minnesota State.

iv. Certification. The CONSULTANT hereby certifies it is in compliance with the requirements of Minnesota Statutes §363A.36 and Minnesota R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

20. EQUAL PAY CERTIFICATION REQUIREMENTS FOR CONTRACTS IN EXCESS OF \$500,000.00 AND THE CONSULTANT HAS MORE THAN 40 FULL-TIME EMPLOYEES IN MINNESOTA OR ITS PRIMARY PLACE OF BUSINESS. [DELETE THIS CLAUSE IF THE TOTAL CONTRACT VALUE IS UNDER \$500,000.00 AND RENUMBER REMAINING CLAUSE IF APPLICABLE.]

Minnesota State intends to carry out its responsibility for requiring equal pay by its CONSULTANTS.

a. Covered Contracts and CONSULTANTS. If the amount of this contract is in excess of \$500,000.00 and the CONSULTANT has 40 or more full-time employees in Minnesota or a state where the business has its primary place of business on a single day during the prior 12 months, the CONSULTANT must comply with the requirements of Minnesota Statutes §363A.44 prior to contract execution. CONSULTANT must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to CONTRACT execution. CONSULTANT is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. A certificate is valid for four years.

i. Consequences. The consequences for the CONSULTANT'S failure to secure and comply with Minnesota Statutes §363A.44 or make a good faith effort to do so,

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include but are but are not limited to, suspension or revocation of a certificate of Compliance by the COMMISSIONER, and termination of all or part of this contract by the COMMISSIONER or Minnesota State.

- ii. Certification. The CONSULTANT hereby certifies it is in compliance with the requirements of Minnesota Statutes §363A.44 and applicable rules and regulations and is aware of the consequences for noncompliance.

21. **INSURANCE.** At the time that a CONSULTANT is selected for project work, it shall have in effect insurance as specified below, which shall be reflected in Certificates of Insurance to be provided to the selecting Minnesota State campus or System Office before the contract for the project work is executed.

- a. **Workers' Compensation Insurance:** Except as provided below, CONSULTANT must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, CONSULTANT will require the subconsultant to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts CONSULTANT from Workers' Compensation insurance or if the CONSULTANT has no employees in the State of Minnesota, CONSULTANT must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes CONSULTANT from the Minnesota Workers' Compensation requirements.

If during the course of the contract the CONSULTANT becomes eligible for Workers' Compensation, the CONSULTANT must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

- b. **Commercial General Liability Insurance:** CONSULTANT is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the CONSULTANT or by a subconsultant or by anyone directly or indirectly employed by the CONSULTANT under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

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Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable, please list _____

The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project’s College or University, the State of Minnesota, officers and employees of the State of Minnesota, named as an Additional Insured, to the extent permitted by law

- c. **Commercial Automobile Liability Insurance:** CONSULTANT is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the CONSULTANT will require the sub-consultant to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

- d. **Professional Liability Insurance:**

The CONSULTANT shall maintain professional liability insurance covering negligent acts, errors or omissions, arising out of performance of, or the failure to perform, any services included in this contract. Additionally, the CONSULTANT shall require its consultants and their sub-consultants, if any, to maintain applicable professional liability insurance. Unless otherwise specified, the minimum amounts for such insurance shall be as follows:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the CONSULTANT and may not exceed \$50,000 without the written approval of Minnesota State. If the CONSULTANT desires authority from - Minnesota State to have a deductible in a higher amount, the CONSULTANT shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting their most current audited financial statements, so that Minnesota State can ascertain the ability of the CONSULTANT to cover the deductible from the CONSULTANT’s own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and CONSULTANT shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by CONSULTANT to fulfill this requirement.

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e. Additional Insurance Conditions:

- CONSULTANT's policy(ies) shall be primary insurance to any other valid and collectible insurance available to Minnesota State with respect to any claim arising out of CONSULTANT's performance under this contract;
 - If CONSULTANT receives a cancellation notice from an insurance carrier affording coverage herein, CONSULTANT agrees to notify Minnesota State in accordance with the policy provisions with a copy of the cancellation notice, unless CONSULTANT's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without advanced written notice to Minnesota State in accordance with the policy provisions;
 - CONSULTANT is responsible for payment of Contract related insurance premiums and deductibles;
 - If CONSULTANT is self-insured, a Certificate of Self-Insurance must be attached;
 - CONSULTANT's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of Professional Liability insurance above;
 - CONSULTANT shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
 - An Umbrella or Excess Liability insurance policy may be used to supplement the CONSULTANT's policy limits to satisfy the full policy limits required by the Contract.
- f. MINNESOTA STATE System Office reserves the right to immediately terminate the contract if the CONSULTANT is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the CONSULTANT. All insurance policies must be available for inspection by the MINNESOTA STATE System Office and copies of policies must be submitted to the MINNESOTA STATE System Office's authorized representative upon written request.

Paragraph 21 of this Contract establishes minimum insurance requirements. It is the sole responsibility of the CONSULTANT to determine the need for, and to procure, additional insurance that may be needed in connection with this Contract and any Purchase Order associated with it for any specific Project performed by the CONSULTANT.

22. **ENTIRE AGREEMENT.** This Contract represents the entire agreement between the parties and supersedes any previous discussions or agreements, either verbal or written that occurred between the parties. This Contract may not be amended except by written agreement signed by the parties hereto. In the event of any conflict or inconsistency between this Contract and any riders, exhibits, addenda, or other document incorporated herein, this Contract shall govern.

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23. **OTHER PROVISIONS.** *[IF "NONE", WRITE "NONE"]*

[The following documents comprise the Agreement:

- a. *Facilities Professional or Technical Services Contract*
- b. *The terms and conditions contained in the Request for Proposal (RFP), dated _____, all addenda (list numbers) to the RFP,*
- c. *the CONSULTANT's response dated _____.*

To the extent of any conflict between the terms of this Agreement and the above-referenced agreements between the Owner and the CONSULTANT, the interpretation most favorable to the Owner shall control.]

[IF ADDING OTHER PROVISIONS OR ATTACHMENTS THAT IMPACT OR CONFLICT WITH WHAT IS STATED IN THE CONTRACT, SEEK ASSISTANCE FROM SYSTEM LEGAL COUNSEL.]

The rest of this page intentionally left blank. Signature page to follow.

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IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. CONSULTANT: *[INSERT NAME OF ARCHITECT FIRM]:*

CONSULTANT certifies that the appropriate person(s) have executed the contract on behalf of CONSULTANT as required by applicable articles, by-laws, resolutions, or ordinances.

By (authorized signature and printed name)
Title
Date

By (authorized signature and printed name)
Title
Date

2. VERIFIED AS TO ENCUMBRANCE:

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:

Employee certifies that funds have been encumbered as required by Minnesota Statutes §16A.15. *When contract is processed through e-Builder, encumbrance is incorporated into the workflow and signature block below is left unsigned.*

See attached Cover Page "Exhibit A" for Encumbrance Details.

By (authorized signature and printed name)
Title
Date

3. MINNESOTA STATE

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:

By (authorized signature and printed name)
Title
Date

4. AS TO FORM AND EXECUTION:

[INSERT NAME OF COLLEGE/UNIVERSITY/SYSTEM OFFICE]:

By (authorized signature and printed name)
Title
Date