

REQUEST FOR PROPOSALS
PORTABLE FOOD SERVICE CARTS
FOR U.S. BANK STADIUM
IN MINNEAPOLIS, MINNESOTA
OCTOBER 5, 2015

A. Project Background and Objectives

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

As set forth in the Act, the design, development and construction of the Stadium and the Stadium Infrastructure (collectively, the “Project”) is a collaborative process between the Authority and Minnesota Vikings Football Stadium, LLC (the “Team”). To that end, the Authority and the Team have prepared this Request for Proposals (“RFP”) for the design, coordination, fabrication, supply, permitting, installation, commissioning, and testing of the _portable food service carts (the “Work”). Those who respond to this RFP shall be referred to as a “Proposer” or “Proposers”.

The Project is located on a site partially including the site of the former Hubert H. Humphrey Metrodome and also including additional adjacent land that has been acquired in Minneapolis, Minnesota. Selected Construction Documents may be incorporated within this RFP as **Exhibits A through G**. The Project is being designed to meet the standards required for a National Football League (“NFL”) franchise, as well as other programmatic uses consistent with other multipurpose facilities. The Project will be designed in accordance with the design requirements set forth in the Act and such additional standards as are established by the Authority. Construction of the Stadium and Stadium Infrastructure is now underway with substantial completion of the overall Stadium and Stadium Infrastructure to be achieved not later than July 29, 2016 so as to be ready for occupancy in advance of the Minnesota Vikings’ 2016 NFL season (the “Required Construction Schedule”).

The successful Proposer to the RFP will be engaged to design, coordinate, fabricate, supply, permit, install, commission, and test the complete Work for the Project (as further described in the RFP and any addenda that will be issued to this RFP) including, without limitation:

- Design, coordination, fabrication, supply, permitting, installation, commissioning, and testing of the complete Work for the Project;
- All necessary equipment and other equipment as needed to provide a turnkey installation and delivery of fully operational portable food service carts; and
- Two-year on-site warranty to repair or replace the hardware.

B. Intent and Process of the Request for Proposals

This RFP is focused on the selection of the design, coordination, fabrication, supply, permitting, installation, commissioning, and testing of the Work for portable food service carts as well as systems integration with the currently designed electrical and data systems.

Proposers should have significant experience in the design, construction, installation, commissioning, and maintenance of portable food service carts (“Providers”). In order to be evaluated to serve as the Provider(s) of the Work for the Project, Proposers should have experience as a Provider on at least three similar or comparable facilities. It is the desire of the Authority to consider as part of its selection criteria the commitment of the Proposer to exert good faith efforts to comply with the plan of the Authority to ensure equitable opportunities for Minority Owned Business Enterprises (“MBE”) and Women Owned Business Enterprises (“WBE”) to participate in the design, supply, construction, fabrication, permitting, installation, commissioning, and testing of the Work for the Project. The successful Proposer or Proposers must also demonstrate the ability to exert good faith efforts to comply with workforce goals and targeted zip code hiring goals, and work with organizations to develop effective MBE, WBE and workforce recruitment efforts during the design, supply, construction, fabrication, permitting, installation, commissioning, and testing of the Work for the Project. As described below, each Proposer should describe how they will encourage the participation and utilization of MBEs and WBEs in the Proposers’ performance of their services consistent with the goals expressed in **Exhibit D**. MBEs and WBEs that are interested in acting as the Provider of the Work for the Project are encouraged to respond to this Request for Proposals.

C. Scope of Work

The Provider is required to design, coordinate, fabricate, supply, permit, install and test the Work for the Project in accordance with the terms of the RFP and any future Addenda.

The Proposal should include conceptual designs for the portable food service carts outlined below. Proposer shall be required to work with the Authority, Team and the Concessionaire through an iterative process to finalize the design of the portable food service carts outlined below. The Work proposed in each Proposer’s RFP response must meet the following requirements:

Grill Cart with Hood – Quantity = 16

1. Available electrical service is highlighted on the Electrical Power Plan included within this RFP. See Exhibit E.
2. Electrical receptacle for this cart is HBL5100R9W as identified in Submittal #262726-PD001 included within this RFP. See Exhibit F.
3. Additional 20A duplex receptacles available for these carts may be identified within Exhibit E.
4. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
5. Stainless steel countertop
6. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides

7. Heavy duty casters, two rigid and four swivel with brake
8. Stainless steel corner trim
9. Black rubber caster skirt
10. Black vinyl bumper
11. Locking storage compartment
12. Stainless steel apron with recessed control panel
13. Full service sneeze guard with glass top, serving shelves, front and sides
14. Stainless steel awning poles
15. Metal awning with recessed LED lights
 - a. Awning to have dimensional signage on customer front side
16. 2" square stainless tubular frame to support ventless hood
17. ½" tempered glass shroud
 - a. Glass to be sealed to countertop with hi-temp silicon
18. Stainless steel drop shelf (for POS station) – Quantity = 2 per cart
19. Electrical access door
20. Stainless steel drop deck
21. Open storage compartment with adjustable shelf
22. Electrical griddle – 3'
23. 1-pan hot food well – Quantity = 1 per cart
24. 1-pan cold food well – Quantity = 1 per cart
25. Built-in single drawer warmer – Quantity = 2 per cart
26. Ventless hood
27. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15.

Hot Food Cart – Quantity = 13

1. Available electrical service is highlighted on the Electrical Power Plan included within this RFP. See Exhibit E.
2. Electrical receptacle for this cart is HBL2810 as identified in Submittal #262726-PD001 included within this RFP. See Exhibit F.
3. Additional 20A duplex receptacles available for these carts may be identified within Exhibit E.
4. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
5. Stainless steel countertop
6. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
7. Heavy duty casters, two rigid and four swivel with brake
8. Stainless steel corner trim
9. Black rubber caster skirt
10. Black vinyl bumper
11. Locking storage compartment
12. Stainless steel apron with recessed control panel
13. Full service sneeze guard with glass front, top shelf and ends
14. Stainless steel awning poles that retract
15. Metal awning with recessed LED lights

- a. Awning to have dimensional signage on customer front side
- 16. Stainless steel drop shelf (for POS station) – Quantity = 2 per cart
- 17. Electrical access door
- 18. Open storage compartment with adjustable shelf
- 19. Electrical griddle – 3'
- 20. 1-pan hot food well – Quantity = 3 per cart
- 21. 1-pan iced cold well – Quantity = 2 per cart
- 22. Built-in single drawer warmer – Quantity = 2 per cart
- 23. 7 ½ gallon water tote tanks – Quantity = 2 per cart
- 24. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15.
- 25. Provide an alternate price to provide 3 food wells instead of the 5 wells noted above in items 20 and 21. (2 hot wells and 1 cold well) Overall length to remain the same with the extra counter space to be used for vendor supplied items.

Bottle Beer Composite Cart – Quantity = 8

- 1. Available electrical service is highlighted on the Electrical Power Plan included within this RFP. See Exhibit E.
- 2. Electrical receptacle for this cart is HBL2810 as identified in Submittal #262726-PD001 included within this RFP. See Exhibit F.
- 3. Additional 20A duplex receptacles available for these carts may be identified within Exhibit E.
- 4. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
- 5. Stainless steel countertop
- 6. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
- 7. Heavy duty casters, two rigid and four swivel with brake
- 8. Stainless steel corner trim
- 9. Black rubber caster skirt
- 10. Black vinyl bumper
- 11. Locking storage compartment – Quantity = 2 per cart
- 12. Full service sneeze guard with glass front, top shelf and ends
- 13. Stainless steel awning poles that retract
- 14. Metal awning with recessed LED lights
 - a. Awning to have dimensional signage on customer front side
- 15. Stainless steel drop shelf (for POS station) – Quantity = 2 per cart
- 16. Electrical access door
- 17. 5-pan iced cold well (provide a poly divider with holes)
- 18. 7 ½ gallon water tote tank – Quantity = 1 per cart
- 19. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Bottle Beer / Liquor Composite Cart – Quantity = 7

- 1. Available electrical service is highlighted on the Electrical Power Plan included within this RFP. See Exhibit E.

2. Electrical receptacle for this cart is HBL2810 as identified in Submittal #262726-PD001 included within this RFP. See Exhibit F.
3. Additional 20A duplex receptacles available for these carts may be identified within Exhibit E.
4. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
5. Stainless steel countertop
6. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
7. Heavy duty casters, two rigid and four swivel with brake
8. Stainless steel corner trim
9. Black rubber caster skirt
10. Black vinyl bumper
11. Open storage compartment – Quantity =2 per cart
12. Full service sneeze guard with glass front, top shelf and ends
13. Stainless steel awning poles that retract
14. Metal awning with recessed LED lights
 - a. Awning to have dimensional signage on customer front side
15. Stainless steel drop shelf (for POS station) – Quantity = 2 per cart
16. Electrical access door
17. Drop-in ice bin with sliding lid – Quantity =2 per cart
18. Stainless steel speed rail – Quantity =2 per cart
19. 7 ½ gallon water tote tanks – Quantity = 2 per cart
20. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Liquor Cocktail Cart – Quantity = 7

1. Available electrical service is highlighted on the Electrical Power Plan included within this RFP. See Exhibit E.
2. Electrical receptacle for this cart is HBL2810 as identified in Submittal #262726-PD001 included within this RFP. See Exhibit F.
3. Additional 20A duplex receptacles available for these carts may be identified within Exhibit E.
4. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
5. Stainless steel countertop
6. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
7. Heavy duty casters, two rigid and four swivel with brake
8. Stainless steel corner trim
9. Black rubber caster skirt
10. Black vinyl bumper
11. Open storage compartment – Quantity =1 per cart
12. Full service sneeze guard with glass front, top shelf and ends
13. Stainless steel awning poles that retract
14. Metal awning with recessed LED lights
 - a. Awning to have dimensional signage on customer front side

15. Stainless steel drop shelf (for POS station) – Quantity = 1 per cart
16. Electrical access door
17. Drop-in ice bin with sliding lid – Quantity =1 per cart
18. Stainless steel speed rail – Quantity =1 per cart
19. 7 ½ gallon water tote tanks – Quantity = 1 per cart
20. Approximately 4' width.
21. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Draft Beer Composite Cart – Quantity = 6

1. Available electrical service is highlighted on the Electrical Power Plan included within this RFP. See Exhibit E.
2. Electrical receptacle for this cart is HBL2810 as identified in Submittal #262726-PD001 included within this RFP. See Exhibit F.
3. Additional 20A duplex receptacles available for these carts may be identified within Exhibit E.
4. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
5. Metal Tubular Platen
6. Metal Exteriors that have applied vinyl graphics on customer front and sides
7. Heavy duty casters, two rigid and four swivel with brake
8. Stainless steel corner trim
9. Black rubber caster skirt
10. Black vinyl bumper
11. Open storage compartment – Quantity =2 per cart
12. Full service sneeze guard with glass front, top shelf and ends
13. Stainless steel awning poles that retract
 - a. Poles extend on the outside of the cart and mount to the metal platen
14. Metal awning with recessed LED lights
 - a. Awning to have dimensional signage on customer front side
15. Stainless steel drop shelf (for POS station) – Quantity = 2 per cart
16. Stainless steel cup holder – Quantity =3 per cart
17. 5-keg draft beer unit with two beer towers with dual taps
18. 5 gallon water tote tanks – Quantity = 1 per cart
19. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Back Support Cart – Quantity = 50

1. Available electrical service is defined on the Electrical Power Plan included within this RFP. See Exhibit E.
2. A 20A duplex receptacle is available for these carts as identified on Drawing E6.0007 included within the RFP. See Exhibits E and F.
3. Proposer shall design the cart to work with existing electrical design. No modifications to the base building electrical design will be permitted.
4. Stainless steel countertop

5. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
6. Heavy duty casters, two rigid and four swivel with brake
7. Stainless steel corner trim
8. Black rubber caster skirt
9. Black vinyl bumper
10. Sink compartment with self-contained water system inside (hot water)
 - a. 5 gallon fresh water tote tank
 - b. 7 ½ gallon waste water tote tank
 - c. Insta-hot water heater
 - d. Water pump
 - e. Single basin hand sink with faucet
11. Soap dispenser
12. Paper towel dispenser
13. Electrical access door
14. Open storage compartment (customer supplied trash container inside)
15. Undercounter refrigerator
16. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Single Sided Condiment Cart – Quantity = 20

1. Stainless steel countertop
2. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
3. Heavy duty casters, two rigid and four swivel with brake
4. Stainless steel corner trim
5. Black rubber caster skirt
6. Black vinyl bumper
7. Storage compartment with locking and sliding doors
8. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Double Sided Condiment Cart – Quantity = 27

1. Stainless steel countertop
2. Metal Tubular Body with Metal Exteriors that have applied vinyl graphics on customer front and sides
3. Heavy duty casters, two rigid and four swivel with brake
4. Stainless steel corner trim
5. Black rubber caster skirt
6. Black vinyl bumper
7. Storage compartment with locking and sliding doors
8. See Exhibit G for Food Service Equipment Specification Section 114000 dated 1/30/15

Delivery, Assembly and Commissioning

1. This is a turnkey project. Proposer is responsible for fabrication, permitting, delivery, project site offloading and handling, final assembly and commissioning of all carts.
2. Delivery and shipment must be coordinated with the Concessionaire and the Construction Manager. Loading dock space and truck dock availability is limited, therefore the timing of truck deliveries must be closely coordinated other trades.
3. Any equipment required to offload and transport carts on the project site is the responsibility of the Proposer. There is a pedestrian ramp that connects the event level, main concourse, and upper concourse as well as a freight elevator that connects all the floors. Availability of the freight elevator is limited and its use must be coordinated with the Construction Manager.
4. It is the responsibility of the Proposer to protect finished walls, floors, etc. while transporting, assembling and commissioning its equipment.
5. Proposer to provide Operation and Maintenance Manuals (5 printed copies and 1 electronic copy) for each piece of equipment, assembled and labeled by cart type.
6. Proposer to train Authority, Stadium Operator and Concessionaire personnel on each type of equipment by cart type.
7. Proposer must have two (2) technicians onsite for the first three events (events selected by the Authority). Proposer must have one technician onsite for the next 3 events (events selected by the Authority). Technicians must be able to troubleshoot issues, repair/replace items not functioning properly, and provide operational support to food service staff.

D. Requested Qualifications

The Authority reserves the right and discretion to determine the qualifications and responsibility of the Proposers to perform the services that are the subject of the RFP. It is the request and intent of the Authority that Proposers responding to the RFP have the following qualifications.

- Significant experience in the design, coordination, supply, installation, and testing of portable food service carts for at least three similar facilities.
- Experience in the design, coordination, supply, installation, and testing of portable food service carts within a professional or major collegiate sports venue with a seating capacity in excess of 15,000 seats.
- In-house capacity to produce necessary design, construction, and schedule documentation, which does not preclude any Proposer from also identifying potential sub-consultants that could assist in producing such estimates and schedules.
- Performance and payment bonds are not required.

E. RFP Timeline

Advertise and issue Request for Proposals	October 5, 2015
Pre-proposal Meeting (1010 S. 7 th Street, Lower Level)	October 13, 2015
Written Questions Due	October 15, 2015
Proposals Due	October 20, 2015
Interviews of Shortlisted Proposers	October 26, 2015

Final Negotiations
Selection of Provider
Project Completion

October 30, 2015
November 2, 2015
July 29, 2016

F. Qualifications and Evaluation Criteria.

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

F.1 Proposer Qualifications

The following items shall be included in a Proposal response:

- Proposer's name and address of office that would have central responsibility for the work. Identify the business form of Proposer and list the principal shareholders or other business owners. If the proposed form of entity is a joint venture, please identify each joint venture participant and their respective percentage of participation. Provide a summary, on three pages or less, describing why the Proposer is the most qualified to be the Provider for the Project.
- Provide copies of Proposer's certificates of insurance showing Proposer's current total limits of liability for commercial general liability, worker's compensation, employer's liability, business automobile liability, and professional liability.
- Provide representative list of similar projects managed by Proposer during that last 10 years or that are currently under construction or management. Include:
 - Project name.
 - Project location.
 - Contracting or ownership entity.
 - Project description; listing dates of construction, seating capacity, project gross square footage, and wireless environment cost. Proposers shall be specific about which projects have been worked on by current employees while employed by your firm vs. those that were worked on while employees of another employer. List key principal of Proposer who was responsible for the project.
 - Key contact or reference from project Owner including name, title, email, and telephone number.
- Submit completed and executed responses to State of Minnesota "Affirmative Action Data" form (**Exhibit B**) and "Statement of Non Collusion" (**Exhibit C**).
- Submit requested exceptions or revisions, if any, to **Exhibit A**; if Proposer does not have any requested exceptions or revisions, Proposer should so state.

F.2 Submittal Requirements: Evaluation of Proposals

In addition to the responses and information requested in Paragraph F. 1 above, Proposers shall also include the information requested below in their Proposals. As described below, the Authority (with the advice and assistance of the Concessionaire) will score Proposals on a point system, with some criteria being graded on a pass fail basis. Proposers who fail any criterion may have their Proposal rejected. A total of 200 points will be available as follows:

Project Delivery:	<u>40</u> points
Proposed Design:	<u>40</u> points
Commercial Terms:	<u>80</u> points
Interview:	<u>40</u> points
Equitable Contracting and Hiring:	Pass/Fail

The Proposals receiving the highest three scores, as determined by the Authority in its sole discretion (with the advice and assistance of the Concessionaire), will then be short-listed and selected to enter into final discussions and negotiations with the Authority, as a result of which the Authority will select in its discretion the Proposer whose final Proposal is most advantageous and the best value to the Authority as permitted by the Act.

Project Delivery – 40 Points (8 points each)

1. Similar Project Experience. Describe Proposer’s experience with fast track projects, and discuss Proposer’s view as to appropriate ways to proceed with the Work requirements for this Project.
2. Project Personnel. Provide names and resumes of key personnel who would be directly responsible for the work. Provide key contact telephone, fax, and email addresses. Provide organizational chart listing proposed team members by name and responsibility. Indicate other projects to which team members are assigned currently for years 2014 to 2016. Any other relevant experience pertinent to the Work requirements for this Project shall be listed under “Other Significant Experience.”
3. Project Specific Risks and Solutions. Identify and describe the risks Proposer perceives as being significant for the scope of services and Work required by this RFP, and how Proposer intends to mitigate, manage, and control those risks.
4. Project Controls. Describe Proposer’s approach and methodology for implementing project controls relating to budget and schedule compliance, and provide examples of Proposer’s experience in successfully managing similar projects that were completed within the established budget and schedule and fulfilled the defined project’s program.
5. Preliminary Performance Schedule. Please provide Proposer’s preliminary critical path method performance schedule with milestones interdependencies identified for critical items of design, ordering, construction, and installation work that generally demonstrates Proposer’s strategy for completing the scope of work required by this RFP by the required deadline.

Proposed Design – 40 Points

1. Include Proposer’s conceptual design for each of the food service portable carts outlined within Paragraph C – Scope of Work.

Commercial Terms – 80 Points

1. Price. (70 Points) Provide itemized pricing on all necessary design, coordination, supply, installation, and testing of a portable food service carts and all scope of work items required by this RFP, including without limitation:

- All design and engineering;
- All fabrication;
- All shipping and delivery costs;
- All applicable taxes;
- All installation;
- All training;
- Opening event support;
- Warranty for two years
- All other project expenses including travel, shipping, and sales tax (if any). Proposer will be required to meet in Minneapolis at least 4 times to finalize the design and program with the Authority, Team and the Concessionaire.
- include unit prices for each type of portable food service cart. The Authority reserves the right to procure more or less portable food service carts than provided as quantities within the Scope of Work. These Unit Prices shall remain valid as proposed until August 1, 2016.
- The Authority reserves the right to split orders into one or more Trade Contract Agreements.

2. Warranties and Maintenance. (10 points) Submit the warranties covering the proposed portable carts. Describe the warranty terms, durations, limitations, etc. Describe the warranty policies regarding user modifications to the portable carts.

3. Requested Revisions, if any, to the Trade Contractor Agreement. If Proposer has any exceptions or revisions to request to **Exhibit A**, the proposed Trade Contract Agreement that the Authority will require Proposer to execute as a condition of any award, Proposer must provide detailed and specific requested exceptions or revisions with its Proposal. If Proposer does not request any exceptions or revisions to **Exhibit A**, please so state.

Interview – 40 Points

1. The Authority will conduct an interview with each qualified Proposer that has submitted a responsive proposal. Interviews will be in the format determined in the Authority’s sole discretion.

Equitable Contracting and Hiring – Pass/Fail

1. Hiring and MBE/WBE Utilization. Describe Proposer’s practices and history of hiring women and minorities. Also describe Proposer’s specific plan to reach targeted goals for MBE and WBE construction participation on this project, and Proposer’s strategies for employing women and members of minority communities to comply with the Authority’s goals in **Exhibit D.**

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

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

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

Each Proposer submitting a Proposal in response to this RFP acknowledges and agrees that the preparation of all materials for submittal to the Authority and all presentation, related costs, and travel expenses are at Proposer’s sole expense and that the Authority shall not, under any circumstances, be responsible for any cost or expense incurred by the Proposers. The Authority shall be allowed to keep any and all materials supplied by the Proposers in response to the RFP.

The Authority reserves the right to accept or reject any or all Proposals, to amend or alter the selection process in any way by addendum, to postpone the selection process for its own convenience at any time, and to waive any non-material defects in proposals submitted. Proposals are required to remain open and subject to acceptance until an award is finalized, or a minimum of (90) days following the date of submission of Proposals. The Authority also reserves the right to accept or reject any individual sub-consultants that the successful Proposer proposes to use.

G. Project Labor Agreement

The Authority will require the Proposer to negotiate and enter into a Project Labor Agreement acceptable to the Authority for the Proposer’s installation work on the Project, if any, required by this RFP.

H. Payment and Performance Bonds

By Minnesota statutes and the Act, payment and performance bonds will be required from the successful Proposer in the amount of 100% of the cost of Proposal.

I. Pre-proposal Meeting

A Pre-proposal meeting will be held October 13, 2015 10:00 a.m. CST in the lower level of 1010 S. 7th Street, Minneapolis, MN. Parking is available in the attached parking ramp. Proposals are due by 4:00

p.m. p.m. CST, October 20, 2015. One electronic copy and 4 bound copies of each Proposal should be enclosed in a sealed envelope addressed to:

Work Proposal

Jamie Hodgson
Aramark
511 11th Avenue South, Suite 401, Minneapolis, MN 55415

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

Work Proposal

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

N. Questions or Inquiries

All questions must be submitted in writing no later than 4:00 p.m. CST, October 15, 2015 to:

Jamie Hodgson
Aramark
511 11th Ave. South Suite 401
Minneapolis, MN 55415
Fax: 612.332.8334
Email: hodgson-jamie@aramark.com

With copies to:

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

O. Minnesota Government Data Practices

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

P. List of Exhibits

- Exhibit A Trade Contractor Agreement Template
- Exhibit B Minnesota Department Affirmative Action Data Page
- Exhibit C Non Collusion Statement
- Exhibit D Authority's Equity Plan
- Exhibit E Construction Documents – Electrical Power Plans

<u>Drawing #</u>	<u>Issue Date</u>
E2.0108	1/7/15
E2.0109	1/7/15
E2.0214	1/7/15
E2.0215	1/7/15
E2.0313	1/7/15
E2.0316	1/7/15
E2.0413	1/7/15
E2.0414	1/7/15
E2.0415	1/7/15
E2.0416	1/7/15
E2.0713	1/7/15
E2.0714	1/7/15
E2.0715	1/7/15
E2.0716	1/7/15
E6.0007	9/19/14

- Exhibit F Submittal 262726-PD001 – Electrical Wiring Devices
- Exhibit G Specification Section 114000 dated 1/30/15. Pages 1 – 28.

EXHIBIT A

**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 2015 (“Effective Date”).

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 for U.S. Bank Stadium

1. General Provisions

1.1 Definitions. The definitions set forth in **Attachment A** shall apply in this Trade Contract Agreement.

1.2 Correlation and Intent. It is the intent of the Trade Contractor and Authority that the Trade Contract Documents include all items necessary for proper design, construction, execution and completion of the Trade Contractor Work. The Trade Contract Documents are complementary, and what is required by any one shall be 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 Work. 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 Work in an expeditious manner. The Trade Contractor represents that the Trade Contractor has visited the Project Site, become familiar with the local and specific conditions under which the Trade Contractor Work is to be performed and correlated personal observations with requirements of the Trade Contract Documents and Agreement. Prior to execution of its Trade Contractor Work, the Trade Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Trade Contractor Work is to be performed, including (a) the location and layout of the Project Site, (b) prevailing climatic conditions, (c) anticipated labor supply and costs, (d) market conditions that will impact the Trade Contract Amount, (e) the requirement that the Trade Contractor has completed a thorough and comprehensive review of the Trade Contract Documents and understands and recognizes the complete scope of the Trade Contractor Work required by the Trade Contract Agreement, (f) existing conditions that will impact the Trade Contractor Work, and (g) availability and cost of materials, tools, and equipment. The Authority shall not be required to make any adjustment in the amount due, if any, under the Trade Contract Agreement to the Trade Contractor or the time required for Trade Contractor's performance of the Trade Contractor Work under the Trade Contract Agreement. In the event of inconsistencies within or between parts of the Trade Contract Documents, or between the Trade Contract Documents and Applicable Laws and NFL Rules and Regulations, the Trade Contractor shall (x) provide the better quality or greater quantity of the Trade Contractor Work or (y) comply with the more stringent requirement, either or both in accordance with the Authority's reasonable interpretation.

1.3 Project Site. Before ordering any materials or doing any Trade Contractor Work, the Trade Contractor shall verify all existing conditions and measurements at the Project Site and shall be responsible for the correctness of such measurements. Any difference that may be found shall be submitted to the Authority for interpretation before proceeding with the Trade Contractor Work. Any errors due to the Trade Contractor's failure to so verify all such dimensions or locations shall be promptly rectified by the Trade Contractor without any additional cost to the Authority.

2. Trade Contractor Work

2.1 Scope of Work. 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 and as set forth on **Exhibit 1**. The Trade Contractor Work is intended to be inclusive of all design, construction, services, work, labor, materials, engineering, Testing, tools, supplies, facilities, management, supervision, permits, licenses, taxes, inspections 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.

2.2 Responsibilities. 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 Contractor 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.

2.3 Cooperation. 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.

2.4 Representation and Warranty. The Trade Contractor warrants and represents the following: (a) the Trade Contract Amount is just and reasonable compensation for all the Trade Contractor Work; (b) said Trade Contract Amount is sufficient to address all foreseen and unforeseen conditions that will impact the Trade Contractor Work and ability to complete the Trade Contractor Work in accordance with the Trade Contract Amount and Contract Time; (c) the Contract Time is adequate for the performance of the Trade Contractor Work; and (d) the Trade Contractor has a complete understanding of the scope of the Trade Contractor Work and has been provided adequate time to establish the Trade Contract Amount in sufficient detail to support the Trade Contract Amount.

2.5 Discipline. The Trade Contractor shall enforce strict discipline and good order among the Trade Contractor's employees and other Persons carrying out the Trade Contractor Work. The Trade Contractor shall not permit employment of unfit Persons not skilled in tasks assigned to them.

2.6 Labor Harmony. The Trade Contractor shall only employ labor in connection with the Trade Contractor Work capable of working harmoniously with all trades, crafts, and any other Persons associated with the Project. The Trade Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

2.6.1 In case the progress of the Trade Contractor Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Trade Contract Documents because of a conflict involving any labor agreement or regulation, the Authority may require that other material or equipment of equal kind and quality be provided pursuant to a Contract Revision, Change Order, or Construction Change Directive to maintain the Trade Contractor's Construction Schedule at no additional cost to the Authority.

2.7 Maintenance Agreement. If agreed to by the Parties, the Trade Contractor shall provide maintenance of its installed Trade Contractor Work after Final Completion in accordance with the terms, conditions, and additional price set forth in **Exhibit 8**, which Maintenance Agreement shall be executed and delivered by the Parties concurrently with the execution of this Trade Contract Agreement.

2.8 Substitutions and Alternates. If, after execution of the Agreement and prior to submittal of applicable Shop Drawings to the Architect and Authority, the Trade Contractor desires to submit an Alternate product in lieu of what has been specified or shown in the Trade Contract Documents, the Trade Contractor may proceed only after receiving written approval from the Authority. All prototypes that have been approved must be installed in their required locations by Trade Contractor, unless an Alternate product has been approved in writing by the Authority.

2.9 Permits. The Trade Contractor shall secure, pay for, and, as soon as practicable, furnish the Authority with copies or certificates of all permits and fees, licenses and inspections necessary for the proper execution and completion of the Trade Contractor Work. The Trade Contractor shall procure all certificates of inspection, occupancy, permits, and licenses, pay all customary charges and fees, and give all notices necessary and incidental to the lawful prosecution of the Trade

Contractor Work. The Trade Contractor shall deliver certificates of inspection, use, and occupancy to the Authority upon completion of the Trade Contractor Work in sufficient time for occupancy or use of the Trade Contractor Work in accordance with the Construction Schedule and occupancy of the Project in accordance with the Master Project Schedule. The costs of such procurement, payment, and delivery are included within the Trade Contract Amount in the Agreement.

2.9.1 If the Trade Contractor performs any Trade Contractor Work knowing it to be contrary to Applicable Laws without such notice to the Authority and Architect, the Trade Contractor shall assume full responsibility for such Trade Contractor Work and shall bear any and all costs attributable to correct it and all damages resulting therefrom.

2.10 [RESERVED]

2.11 Trade Contractor's Construction Schedule. The Trade Contractor shall prepare in consultation with the Authority, Team, Construction Manager and Architect, and submit for the Authority's and Construction Manager's review and approval, a Construction Schedule. The Construction Schedule shall not exceed time limits current under the Trade Contract Documents, shall be updated and revised at appropriate intervals as required by the conditions of the Trade Contractor Work and Project, shall be related to the entire Project to the extent required by the Trade Contract Documents, shall provide for expeditious and practicable execution of the Trade Contractor Work, and the Critical Path and Construction Milestone Dates shall not be modified or extended without the prior written approval of the Authority or as provided in the Trade Contract Documents in each instance. The Trade Contractor acknowledges and agrees it must coordinate its Trade Contractor Work and not interfere with the overall Master Project Schedule of the Construction Manager and that in no event shall the Authority be responsible for any costs incurred by Trade Contractor due to its responsibility to coordinate its Trade Contractor Work and not interfere with the Master Project Schedule of the Construction Manager. In the event the Authority determines that the performance of the Trade Contractor Work has not progressed or reached the level of completion required by **Exhibit 4** of this Trade Contract Agreement or the Construction Schedule, the Authority shall have the right, but not the obligation, to order the Trade Contractor to take corrective measures necessary to expedite the progress of construction, including (a) working additional shifts or overtime, (b) supplying additional manpower, equipment, and facilities, and (c) other similar measures (hereinafter referred to collectively as "**Extraordinary Measures**"). Such Extraordinary Measures shall continue until the progress of the Trade Contractor Work complies in the Authority's reasonable judgment with the stage of completion required by the approved Construction Schedule. The Authority's right to require Extraordinary Measures is solely for the purpose of ensuring the Trade Contractor's compliance with the Construction Schedule or as required by this **Paragraph 2.11**. To the extent that the need for Extraordinary Measures is the responsibility or fault of the Trade Contractor, the Trade Contractor shall not be entitled to an adjustment in the Trade Contract Amount or Contract Time in connection with Extraordinary Measures pursuant to this **Paragraph 2.11**. Float in the Construction Schedule shall be utilized for the benefit of the Project.

2.12 Shop Drawings, Product Notes and Samples. The Trade Contractor shall perform no portion of the Trade Contractor Work until the associated Shop Drawings, Product Data, Samples, or similar Submittals related to that Trade Contractor Work has been reviewed and approved by the Authority (or if designated by the Authority, by its designee). Such Trade Contractor Work shall be in accordance with approved Submittals.

2.12.1 The Trade Contractor shall not be relieved of responsibility for deviations from requirements of the Trade Contract Agreement by the Authority's (or if designated by the Authority, its designee's) approval of Shop Drawings, Product Data, Samples, or similar Submittals, unless the Trade Contractor has specifically informed the Authority (or if designated by the Authority, its designee) in writing of the existence and nature of such deviation at the time of submittal and the Authority (or if designated by the Authority, its designee) has given written approval to the specific deviation. The Trade Contractor shall not be relieved of responsibility for errors or omissions in

Shop Drawings, Project Data, Samples, or similar Submittals by the Authority's (or if designated by the Authority, its designee's) approval thereof.

2.12.2 The Trade Contractor represents and warrants that all Shop Drawings shall be prepared by Persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Trade Contract Documents or Applicable Laws, by a licensed design professional.

2.13 Cutting and Patching. The Trade Contractor shall be responsible for cutting, fitting, or patching required to complete the Trade Contractor Work or to make the Trade Contractor Work fit together properly. The Trade Contractor shall be responsible for cutting, patching, repairing, and cleaning of any and all Project walls, floors and ceilings that it may damage during construction.

2.13.1 The Trade Contractor shall not damage or endanger a portion of the Trade Contractor Work, the fully or partially completed work of a separate Trade Contractor, Vendor, or any other Project Participant by cutting, patching, or otherwise altering such construction, or by excavation, except with written consent of the Authority and the Construction Manager, the other Trade Contractor or Vendor; such consent shall not be unreasonably withheld. The Trade Contractor shall not unreasonably withhold from the Authority, Construction Manager, Trade Contractor, or Vendor the Trade Contractor's consent to cutting or otherwise altering the Trade Contractor Work.

2.13.2 Altering or cutting of structural members will not be allowed without written approval by the Architect or Construction Manager. The Trade Contractor shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless, avoidable cutting or damage is not permitted and the Trade Contractor will be held responsible for such avoidable damage.

2.14 Cleaning Up. The Trade Contractor shall keep the premises of the Trade Contractor Work and all surrounding areas to the Project Site free from (a) accumulation of waste materials, debris, or rubbish; (b) the Trade Contractor's tools, construction equipment, machinery; and (c) surplus materials, and any excess mud, gravel, or earth caused by operations under the Trade Contract Agreement. At completion of the Trade Contractor Work, the Trade Contractor shall remove from and about the Project all waste materials, debris, rubbish, the Trade Contractor's tools, construction equipment, machinery, surplus materials, and any excess mud, gravel, or earth from and around the Project and the surrounding rights-of-way. If the Trade Contractor fails to cleanup as required, the Authority may, but shall not be obligated to, perform the Trade Contractor's cleanup and charge the cost thereof to Trade Contractor.

2.15 Access to Trade Contractor Work. The Trade Contractor shall provide the Authority, Team, their respective agents and representatives, and Architect access to the Trade Contractor Work in preparation and progress wherever located.

2.16 Means and Methods. In no event shall the Authority or Indemnitees have any responsibility or liability for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Trade Contractor Work, notwithstanding any of the rights and authority granted the Authority and Indemnitees in the Trade Contract Agreement.

3. Design Services.

3.1 Performance and Coordination. The Design Services provided by the Trade Contractor, or through a design professional Consultant that Trade Contractor retains to fulfill its obligations

under the Trade Contract Agreement, shall be performed in strict accordance with all provisions of the Act. Trade Contractor shall coordinate and integrate the Design Services with the Architect, Construction Manager and other Trade Contractors and Vendors to allow the Construction Manager, Vendors, and Trade Contractors to complete their work.

3.2 Standard of Care. The Design Services provided by Trade Contractor for the design and construction of its Trade Contractor Work shall be provided pursuant to the Standard of Care applicable to professional design services.

4. Contract Time

4.1 Time. 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. Trade Contractor shall achieve Substantial Completion of the Trade Contractor Work within the time frames specifically described in Exhibit 4. 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 “Substantial Completion” or “Substantially Complete” shall mean the date or dates listed in Exhibit 4 and that the Trade Contractor Work (or separable units or phases as may be agreed to by the Authority) is essentially and satisfactorily complete in accordance with the Trade Contract Documents, such that the Trade Contractor Work is fully commissioned, fully operational, received all required certifications and approvals pursuant to Applicable Law, and will permit beneficial use by the Authority. A minor amount of Trade Contractor Work, as determined by and at the discretion of Authority, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustment of controls or systems, or completion or correction of minor exterior work that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. For purposes of Substantial Completion, specified areas of the entire Trade Contractor Work as may be chosen by the Authority may be individually judged as Substantially Complete. In no event shall Substantial Completion be deemed to have occurred until any certificates or licenses required from Suppliers for use of the Trade Contractor Work have been delivered to the Authority.

4.3 Punchlist. When the Trade Contractor considers that the Trade Contractor Work, or a portion thereof which the Authority agrees to accept separately, is Substantially Complete, the Trade Contractor shall prepare and submit to the Authority a comprehensive Punchlist of items to be completed or corrected. The Trade Contractor shall proceed promptly to complete and correct items on the Punchlist. Failure to include an item on the Punchlist does not alter the responsibility of the Trade Contractor to complete all Trade Contractor Work in accordance with the Trade Contract Documents. The Authority reserves the right to add to the Punchlist within thirty (30) Days after receipt of an acceptable Punchlist from the Trade Contractor. Upon receipt of the Trade Contractor’s Punchlist, the Authority will make an inspection to determine whether the Trade Contractor Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included on the Trade Contractor’s Punchlist, which is not in accordance with the requirements of the Trade Contract Documents, the Trade Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Authority. The Trade Contractor shall then submit a request for another inspection by the Authority to determine Substantial Completion. When the Trade Contractor Work or designated portion thereof is Substantially Complete, the Authority will prepare a Certificate of Substantial Completion for execution by the parties.

4.4 Final Completion. Within sixty (60) Days after Substantial Completion, the Trade Contractor shall achieve Final Completion of all Trade Contractor Work. The date of Final Completion shall establish the start of responsibility under the Agreement for security, maintenance, heat, utilities, damage to the Trade Contractor Work, and insurance. Warranties required by the

Trade Contract Documents shall commence on the date of Final Completion of the Trade Contractor Work or designated portion thereof. The Certificate of Final Completion shall be submitted to the Authority and the Trade Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Final Completion of the Trade Constrictor Work shall not occur until the Trade Contractor submits to the Authority (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Trade Contractor Work for which the Authority or the Authority's property might be responsible or encumbered have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Trade Contract Documents to remain in force after Final Completion is currently in effect and that Trade Contractor will give the Authority and Team not be canceled or allowed to expire until at least thirty (30) Days' prior written notice to the Authority and Team before they are allowed to expire or be cancelled except in the event of non-payment of premium, in which case seven (7) Days' prior notice will be provided, (c) a written statement that the Trade Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Trade Contract Documents or the Agreement, (d) consent of surety, if any, to final completion, and (e) if required by the Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, Claims, security interests or encumbrances arising out of the Trade Contract Documents, to the extent and in such forms as may be designated by the Authority. If a Lien or Claim for payment relating to the Trade Contractor Work remains unsatisfied after Final Completion, the Trade Contractor shall pay to the Authority all money that the Authority may be compelled to pay in discharging such Lien or Claim, including all costs and reasonable attorneys' fees.

4.5 Force Majeure. 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 Critical Path 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.

4.6 Contract Time Extensions. 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 Trade Contractor Work not directly affected by said cause of delay and, with respect to such portion or portions of the Trade Contractor 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. The Trade Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (a) is not caused, or could not have been reasonably avoided, by the Trade Contractor, or (b) could not be reasonably limited or avoided by the Trade Contractor's timely notice to the Authority of the delay or reasonable likelihood that a delay will occur.

4.7 Progress Report. If the Trade Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Trade Contractor Work prior to any completion date required by the Trade Contract Documents or expiration of the Contract Time, no liability of the Authority to the Trade Contractor for any failure or inability of the Trade Contractor to so complete the Trade Contractor Work shall be created or implied.

4.8 Partial Use. The Authority shall have the right to use, without prejudice to rights of either Party, any completed or Substantially Completed portions of the Trade Contractor Work, notwithstanding the fact that time for completion of entire Trade Contractor Work, or portions

thereof, may not be expired. Use by Authority shall not constitute, in itself, acceptance of the Trade Contractor Work.

4.9 to 4.16 [Reserved]

4.17 Royalties and Patents. The Trade Contractor shall pay all royalties and license fees. The Trade Contractor shall defend suits or claims for infringement of patent rights and shall hold the Authority and all Indemnitees harmless from loss on account thereof.

4.18 Indemnification by Trade Contractor.

4.18.1 To the fullest extent permitted by Applicable Laws, Trade Contractor hereby agrees to indemnify, hold harmless, and defend the Authority and Indemnitees from and against any and all claims, damages, liabilities, losses and expenses (specifically including reasonable attorneys' fees and costs, court fees and costs, and arbitration fees and costs incurred to defend the Authority and Trade Contractor's liability shall not be limited by the amount or limit of insurance Trade Contractor procures to insure its obligations to the Authority or Indemnitees), provided that such claims, damages, losses or expenses arise out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Trade Contractor Work itself), but only to the extent arising out of, resulting from, or incurred in connection with the performance of the Trade Contractor Work and to the extent in whole or in part caused or alleged to have been caused by the negligent or grossly negligent acts or omissions, of the Trade Contractor, Trade Contractor's employees, Subcontractors, Sub-Subcontractors, Suppliers or any Person for whom the Trade Contractor is legally responsible in the performance of the Trade Contractor Work under this Trade Contract Agreement, whether arising before or after completion of the Trade Contractor Work and arising out of, resulting from, or occurring in connection with the performance of the Trade Contractor Work or any activity associated with the Trade Contractor Work, from any activity of the Trade Contractor, Trade Contractor's employees, its Subcontractors, Sub-Subcontractors, Suppliers, their agents, or employees at the Project Site or elsewhere, and whether in part caused by the active or passive negligence or other fault of a Party or Person indemnified hereunder, excepting only personal injury to Persons or damage to property found to have been caused by the sole negligence of a Party or Person indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a Party or Person described in this **Subparagraph 4.18.1**.

4.18.2 Trade Contractor acknowledges and agrees that it has an independent obligation under this Trade Contract Agreement to procure and maintain contractual liability coverage insurance as will insure Trade Contractor's obligations in this **Paragraph 4.18**, and further acknowledges that such insurance is commercially available. Trade Contractor's liability shall not be limited by the amount or limit of insurance Trade Contractor procures to insure its obligations herein. Trade Contractor agrees and acknowledges that such contractual liability coverage is for the benefit of the Authority and Indemnitees, but does not require Trade Contractor to provide such insurance directly to the Authority and Indemnitees.

4.18.3 In addition to its duties under **Paragraph 4.18** herein, the Trade Contractor shall defend, indemnify, and hold harmless the Authority and the Indemnitees from and against any and all alleged claims, damages, liabilities, losses and expenses (specifically including reasonable attorneys' fees and costs, court fees and costs, and arbitration fees and costs incurred to defend the Authority and Indemnitees) caused by Trade Contractor's breach of this Trade Contract Agreement to the extent finally determined. For the purpose of this **Subparagraph 4.18.3**, the Authority's or an Indemnitee's tender shall not be deemed to require proof of the Trade Contractor's breach of contract at the time of tender.

4.18.4 In the case of claims against any Party or Person indemnified under this **Paragraph 4.18** by an employee of the Trade Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this **Paragraph 4.18** shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Trade Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

4.18.5 The Trade Contractor shall indemnify the Authority, Indemnitees, and the respective directors, officers, agents, and employees of any of them from and against any and all costs and expenses, specifically including reasonable attorneys' fees and costs, court fees and costs, and arbitration fees and costs, incurred by any of the foregoing Parties or Persons to enforce any of the Trade Contractor's defense, indemnity, and hold-harmless obligations under this Trade Contract Agreement.

4.18.6 The Trade Contractor's obligation to defend as set forth in **Subparagraphs 4.18.1** and **4.18.3** includes the obligation to provide and pay for attorneys to defend the Party or Persons entitled to indemnification under **Subparagraphs 4.18.1** and **4.18.3**, which attorneys shall be subject to the approval of such Party and Persons; and if such Party or Persons do not approve the attorneys provided by the Trade Contractor, the Trade Contractor shall promptly pay the attorneys' fees incurred by the Party or Persons entitled to indemnification

5. Trade Contract Amount

5.1 The Trade Contract Amount shall be as set forth on **Exhibit 2**.

6. Record Retention, Audit and Claims

6.1 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 and approved by the Authority and Team. Trade Contractor shall afford the Authority 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 seven (7) years after final payment, or for such longer period as may be required by Applicable Laws. The Trade Contractor shall account for and keep track of the Cost of the Trade Contractor Work, including all materials, equipment and labor utilized in the performance of the Trade Contractor Work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Trade Contract Agreement. 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 **Paragraph 6.1**. 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. 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.

6.2 Claims and Disputes

6.2.1 Definition. A “Claim” is a demand or assertion by a Person seeking as a matter of right, adjustment or interpretation of terms of an agreement, payment of money, extension of time, or other relief with respect to the terms of the Trade Contract Documents. The term “Claim” also includes, without limitation, other disputes and matters in question between the Authority and the Trade Contractor, between the Architect and the Construction Manager, between the Authority and the Architect or between the Authority and the Construction Manager arising out of or relating to the applicable Contract Documents or Trade Contract Documents. Claims must be made by written notice provided by the claimant to the Party against whom the Claim is being made, with a copy to the Authority. The responsibility to substantiate Claims shall rest with the party making the Claim.

6.2.2 Referral to Authority. Claims, including those alleging an error or omission by the Trade Contractor will be referred initially to the Authority for action as provided in **Paragraph 6.3**. The recommendation by the Authority, if any, in response to a Claim shall not be a condition precedent to arbitration or litigation.

6.2.3 Time Limits on Claims. Except as provided in **Subparagraph 6.2.6** below, and except for Claims asserted by the Authority, Claims by any Person that are discovered during the performance of the Trade Contractor Work must be made within twenty-one (21) Days after occurrence of the event giving rise to such Claim or within twenty-one (21) Days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, or said Claim shall be deemed waived. In addition to the foregoing, as soon as the claimant recognizes the conditions giving rise to the Claim, claimant shall provide notice of such conditions to the Authority, and shall use its best efforts to cooperate with the Authority and the Party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such a Claim. Any additional Claim related to the initial Claim that is made after the initial Claim has been adjusted and dealt with by Contract Revision will not be considered. Claims may also be reserved in writing within the time limits set forth in this **Subparagraph 6.2.3**. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in **Paragraph 6.3** and **Paragraph 6.4** hereof shall not commence until a written notice from the claimant is received by the Authority. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim, and it shall be assumed that the Authority has been prejudiced if it does not receive said information.

6.2.4 Continuing Contract Performance. Pending final resolution of a Claim, unless otherwise agreed in writing, the Trade Contractor shall proceed diligently with performance of its Trade Contractor Work, and the Authority shall continue to make payments in accordance with the Trade Contract Documents. In the event the Trade Contractor fails to diligently proceed with its Trade Contractor Work during a period of dispute resolution, the Authority may procure necessary replacement services or work and back-charge all associated costs to the non-performing party.

6.2.5 Injury or Damage to Person or Property. If during the performance of the Trade Contractor Work any member of the Project Team suffers injury or damage to person or property because of an act or omission of any other member of the Project Team, such other party’s employees or agents, or others for whose acts such member of the Project Team is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other member of the Project Team within a reasonable time not exceeding twenty-one (21) Days after first observance of the injury or damage. The notice shall provide sufficient detail to enable the other members of the Project Team to investigate the matter.

6.2.6 Claims for Concealed or Differing Site Conditions. Notwithstanding anything to the contrary in the Trade Contract Documents, the Trade Contractor acknowledges and agrees that it has thoroughly investigated the existing design and construction of the Project and the future anticipated construction of the Project, and hereby waives any Claims for conditions encountered at the Project Site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Trade Contract Documents, the design of the Project prepared by the Architect, or existing construction and (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Trade Contract Documents or the design of the Project prepared by the Architect. The Trade Contractor acknowledges and agrees that this exclusion of Claims for differing site conditions has been specifically negotiated and that the Trade Contract Amount in **Exhibit 2** contains an adequate and fair contingency to address this specific risk among others.

6.2.7 Claims for Cost. If the Trade Contractor wishes to make a Claim for an increase in the Trade Contract Amount, written notice to the Authority as strictly set forth under this **Paragraph 6.2** is required and shall be given before the Trade Contractor proceeds to execute the Trade Contractor Work or the Trade Contractor's Claim shall be deemed waived. Any Trade Contractor Work completed by the Trade Contractor without the proper notice to and approval by the Authority will not be considered or approved as a change to the Trade Contract Amount. Prior notice is not required for Claims relating to an emergency endangering life or property pursuant to **Paragraph 13.4** below. If the Trade Contractor believes additional cost above the Trade Contract Amount are involved for reasons including but not limited to (a) written interpretation from the Authority, (b) an order by the Authority to stop the Trade Contractor Work where the Trade Contractor was not at fault, (c) a written order for a minor change in the Trade Contractor Work issued by the Architect, (d) other reasonable grounds, the Claim shall be filed in accordance with the procedure established herein.

6.2.8 Claims for Additional Time. If the Trade Contractor wishes to make a Claim for an increase in the Contract Time, written notice shall be given within the time period specified in **Subparagraph 6.2.3** or said Claim shall be deemed waived. The Trade Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Trade Contractor Work and the Construction Schedule. In the case of a continuing delay only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the Construction Schedule.

6.2.9 Claims for Consequential Damages. Except as provided in **Exhibit 4**, the Trade Contractor and the Authority waive Claims against each other for consequential damages arising out of or relating to the Trade Contractor Work. This mutual waiver includes:

.1 damages incurred by the Authority for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such Persons; and

.2 damages incurred by the Trade Contractor for labor, material, or principal office costs or expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Trade Contractor Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with **Article 16** below. Nothing contained in this **Subparagraph 6.2.9** shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of **Exhibit 4**. In addition, this **Subparagraph 6.2.9** does not apply to or preclude the Authority's right to recover consequential damages to the extent provided below. Notwithstanding anything to the contrary, the Authority does not waive and specifically reserves all rights and claims to recover any and direct damages, indirect damages, incidental damages, consequential, damages incurred by the Authority and Indemnitees, including rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or the services of such Persons, and any other type or form of damages ("**Reserved Damages**") against the Trade Contractor to the extent that such claims for Reserved Damages are due to the need to repair the Trade Contractor's improper or defective Trade Contractor Work after Substantial Completion or are covered by any insurance available under the OCIP program or under the Trade Contractor's insurance program.

6.3 Review of Claims and Disputes

6.3.1 The Authority, will review all Claims once submitted by the Trade Contractor and take one or more of the following preliminary actions within ten (10) Days of receipt of a Claim: (a) request additional supporting data from the claimant, (b) submit a schedule to the parties indicating when the Authority expects to take action, (c) reject the Claim in whole or in part, stating reasons for rejection, (d) recommend approval of the Claim, (e) suggest a compromise, or (f) not take any of the above actions, in which case the Claim shall be deemed denied. The Authority may also, but is not obligated to, notify the Trade Contractor's surety, if any, of the nature and amount of the Claim.

6.3.2 If a Claim submitted to the Authority has been resolved, the Authority will prepare or obtain appropriate documentation to memorialize and process the resolution.

6.3.3 If a Claim submitted to the Authority has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Authority, the Authority will, in a timely fashion, notify the parties in writing that the Authority's recommendation will be made within seven (7) Days. Upon expiration of such time period, the Authority will render to the parties its final recommendation relative to the Claim including any change in the Trade Contract Amount or Contract Time or both. The parties may then (a) agree to resolve the Claim or (b) proceed pursuant to **Paragraph 6.4** hereof. If the Authority's recommendation is not submitted within thirty (30) Days of the Authority's receipt of the Claim, the Claim shall be deemed denied.

6.4 Dispute Resolution

6.4.1 Mediation. Claims, disputes, or other matters in controversy arising out of or related to the Trade Contractor Work shall be subject to mediation as a condition precedent to binding dispute resolution. The Parties shall submit a written demand for mediation to the Authority, which shall describe in detail the facts and circumstances of the dispute. The Authority shall designate a neutral third-party to serve as mediator. The mediator shall hear the matter in Minneapolis, Minnesota, and provide an informal opinion and advice, none of which shall be binding on the Parties involved in the dispute. The opinion shall be submitted to the parties in dispute within twenty (20) Days of the mediator hearing the dispute. The Parties in dispute will then agree within ten (10) Days to resolve the dispute pursuant to the mediator's advice or submit the matter to arbitration pursuant to **Subparagraph 6.4.2**. The mediator's costs shall be shared equally by the Parties in the

dispute. The request to mediate may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) Days from the date of filing, unless stayed for a longer period by agreement of the Parties or court Order. If an arbitration is stayed pursuant to this **Subparagraph 6.4.1**, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

6.4.2 Claims Subject to Arbitration. Any Claim subject to, but not resolved by, mediation shall be subject to arbitration, which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules (“AAA Rules”) in effect as of the Effective Date of this Trade Contract Agreement. The Party filing a notice of demand for arbitration must assert in the demand all Claims then known to that Party on which arbitration is permitted to be demanded. All proceedings set forth under this **Paragraph 6.4** shall be conducted in Minneapolis, Minnesota.

6.4.3 Notice for Arbitration. Notice of Demand for Arbitration shall be filed, in writing, with the other Party to the applicable agreement, with any Party to be joined pursuant to **Subparagraph 6.4.6** hereof, and with the American Arbitration Association, the Authority, Trade Contractor, Construction Manager, and the Architect, to the extent they are not otherwise a Party to the arbitration. At the Authority’s election, and its sole discretion, it may invoke application of Fast Track Procedures under the AAA Rules for any such arbitration proceedings initiated under the Contract Documents. The Trade Contractor acknowledges and agrees that Minn. Stat. § 544.42 does not apply to this Project.

6.4.4 Contract Performance During Arbitration. During arbitration proceedings, the Authority, Trade Contractor, Architect, Construction Manager and any Subcontractor or Subconsultant shall comply with **Subparagraph 6.2.4** hereof.

6.4.5 When Arbitration May Be Demanded. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or repose. For statute of limitations purposes, receipt of a written demand for arbitration by the Person administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

6.4.6 Consolidation or Joinder. Any arbitration shall include, by consolidation or joinder, the Construction Manager, Architect, Subcontractors, Suppliers, Subconsultants, Trade Contractors, and other Persons bound to arbitrate according to this **Paragraph 6.4** if substantially involved in a common question of fact or law. The foregoing agreement to arbitrate and consolidation and joinder shall be specifically enforceable under Applicable Laws in any court having jurisdiction thereof. Any contract between the Trade Contractor and any Subcontractor and Supplier and contracts between Subcontractors and Suppliers and lower tiers of Sub-Subcontractors and suppliers shall include provisions for arbitration, consolidation, and joinder consistent with this **Paragraph 6.4**.

6.4.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Applicable Laws in any court having jurisdiction thereof.

6.4.8 Litigation of Third-Party Claims. If a third-party who is not a member of the Project Team sues a member of the Project Team, the Authority, or Team in a court of law (“Third-Party Suit”), then the Authority, or the Team as applicable, shall have the absolute discretion to join in the Third-Party Suit members of the Project Team who are

involved in common questions of law or fact or whose participation is necessary to provide complete relief in the Third-Party Suit, and the Authority, and the Team as applicable, have the absolute discretion to decide to waive and not require arbitration of Claims involving the Third-Party Suit as otherwise provided in these Terms of Design and Construction. The Project Team hereby consents to jurisdiction and venue in any court in which the suit is commenced or to which such Third-Party Suit is removed.

6.4.9 Attorneys' Fees and Costs. If any legal action, litigation or other proceeding, including arbitration, is brought for the enforcement of the Construction Services Agreement, the Design Services Agreement, this Trade Contract Agreement or the Trade Contract Documents and/or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of the Construction Services Agreement, the Design Services Agreement, this Trade Contractor Agreement or the Trade Contract Documents, the prevailing Party shall be entitled to recover, in addition to all other amounts awarded, reasonable attorneys' fees all reasonable costs and fees associated with paralegal, experts, consultants, or others engaged for the purposes of the litigation or proceeding, in addition to court costs, the expenses of arbitration, and other reasonable costs bringing or defending the action, and, in addition, any other relief of which it may be entitled.

7. Changes

7.1 Contract Request. All changes to the Trade Contractor Work must be approved in strict accordance with the requirements of this Trade Contract Agreement. No change in the Trade Contractor Work, in any form, will be approved without the Trade Contractor providing the Authority with all reasonably required documentation, including a properly completed Contract Request Form, which will be provided by the Authority. 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 approved changes, if any, 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 Trade Contractor Work in accordance with the requirements of this **Paragraph 7.1** and the Trade Contract Documents and to provide projected cost impacts, if any, 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 this Trade Contract Amount.

7.2 Contract Revision. 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 Trade Contractor Work, and which may include an adjustment in the Trade Contract Amount and/or an adjustment to the Construction Schedule or Contract Time. Costs to the Authority resulting from a Change in the Trade Contractor 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 herein. 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 **Paragraph 7.2** and the notice of Claims provision **Paragraph 6.2**. 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. Except as otherwise set forth therein, any executed Contract Revision shall constitute a final settlement of all matters relating to or arising out of the change in the Trade Contractor Work which is the subject of the Contract Revision, including all direct and indirect costs associated with such change and any and all adjustments to the Trade Contract Amount and the Construction Schedule or Contract Time.

7.3 Construction Change Directive. A “**Construction Change Directive**” is a written order prepared by the Authority, directing a change in the Trade Contractor Work. The Authority may by Construction Change Directive, without invalidating the Trade Contract Documents, order changes in the Trade Contractor Work within the general scope of the Trade Contract Documents consisting of additions, deletions, or other revisions, the Trade Contract Amount and Contract Time being adjusted, if appropriate. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Contract Revision. No adjustment to the Contract Time shall be made or allowed if the Construction Change Directive does not cause a delay to the Critical Path of the Construction Schedule.

7.3.1 If the Construction Change Directive does not provide for an adjustment to the Trade Contract Amount, any adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by efficient substantiating data to permit evaluation;
- .2 unit prices stated in the Trade Contract Documents or subsequently agreed upon; or
- .3 actual costs of the Trade Contractor Work.

8. Subcontractors

8.1 Award of Subcontractors. 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. Before this Trade Contract Agreement is executed, the Trade Contractor shall furnish the Authority, in writing, with (a) the name, trade and subcontract amount of all Persons and entities proposed as Subcontractors, and (b) the names of all Persons or entities proposed as Suppliers of the material or equipment identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. The Authority will promptly reply to the Trade Contractor in writing stating whether or not the Authority, after due investigation, has reasonable objection to any such proposed person or entity.

8.2 Subcontract Relations. Each Subcontract shall obligate the Subcontractor, to the extent applicable to the Trade Contractor Work performed by the Subcontractor, to assume toward the Trade Contractor and the Authority all the responsibilities, terms and conditions of the Trade Contract Agreement that the Trade Contractor assumes toward the Authority. The Trade Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Trade Contract Documents applicable to the Subcontractor’s portion of the Trade Contractor Work, except Trade Contractor may redact pricing and other sensitive information from the copies provided to the Subcontractors.

8.3 Contingent Assignment of Subcontracts. Each Subcontract for a portion of the Trade Contractor Work is assignable by the Trade Contractor to the Authority provided that:

.1 assignment is effective only after termination of the Trade Contractor Work or stoppage of Trade Contractor Work by the Authority as provided in the Trade Contract Agreement and only for those Subcontracts which the Authority accepts by notifying the Subcontractor in writing in the Authority's sole discretion; and

.2 assignment is subject to the prior rights of the Trade Contractor's surety, obligated under bonds relating to the Trade Contractor Work.

8.4 Authority's Rights to Perform Construction. The Authority reserves the right to perform construction or operations related to the Project with the Authority's own forces and to award separate Trade Contracts or Vendor Contracts in connection with other portions of the Project or other construction or operations on the Project Site under conditions substantially similar to this Trade Contract Agreement, including those portions related to insurance and waiver of subrogation.

8.5 Payments to Subcontractors and Suppliers. Before making payments to any of its Suppliers or Subcontractors, Trade Contractor shall obtain lien waivers from all Subcontractors and Suppliers providing services, materials or work to Trade Contractor on the Project and representation from said Subcontractors and Suppliers that their work is free and clear of liens, Claims, security interests, or encumbrances. The Trade Contractor further expressly undertakes to defend and indemnify the Authority and the Indemnitees, at the Trade Contractor's sole expense with independent counsel of the indemnified party's choice, against any actions, lawsuits, or proceedings brought against the Authority or any Indemnitee as a result of Claims or liens filed against the Trade Contractor, the Trade Contractor Work, the Project Site, any improvements thereon, or any portion of the property of the Authority or any Indemnitee, and the Trade Contractor hereby agrees to pay any judgment or Lien resulting from any such actions, lawsuits or proceedings.

9. Coordination with Construction Manager

9.1 Project Schedule. The Trade Contractor will be responsible for coordinating, scheduling, and integrating the Trade Contractor Work with the work of the Construction Manager. The Trade Contractor shall be responsible for managing and administering the coordination and integration of the Trade Contractor Work with the work of the Construction Manager and other Trade Contractors and Vendors being performed at the Project Site. The Construction Manager shall establish a complete Master Project Schedule, which shall be coordinated with the schedules provided by the Trade Contractors and Vendors and include all logical relationships between the work of the Construction Manager and the Trade Contractor Work. The Construction Manager shall review and periodically update the Master Project Schedule to monitor, track and control the progress of the work of the Construction Manager and other Trade Contractors being performed at the Project Site, and to facilitate the coordination of and assist timely performance of the Trade Contractor Work where the Construction Manager work is logically dependent upon such timely performance. The Construction Manager shall make any revisions to the Master Project Schedule deemed necessary for its work or the Trade Contractor Work. The resulting schedule shall then constitute the Master Project Schedule to be used by the Construction Manager, Trade Contractors, Vendors, and the Authority until subsequently revised. The Trade Contractor and Construction Manager shall cooperate with each other so as to avoid delay, interference or disruption to either of their work or the work of other Trade Contractors or Vendors.

9.2 Coordination. The Trade Contractor shall afford the Authority, Construction Manager, other Trade Contractors and Vendors reasonable opportunity for introduction and storage of their materials and equipment and performance of the work of the Construction Manager, work of other Trade Contractors or Vendors at the Project Site. The Trade Contractor shall properly and fully connect and coordinate its Trade Contractor Work with the work of the Construction Manager and

other Trade Contractors or Vendors so as not to interfere with or to delay the work of the Construction Manager or the work of such other Trade Contractors or Vendors.

9.3 Damage. The Trade Contractor shall promptly remedy damage caused by the Trade Contractor to completed or partially completed construction or to property of the Authority, the Construction Manager's work, or work of other Trade Contractors or Vendors. The Trade Contractor shall reimburse the Authority for costs incurred by the Authority which are payable to the Construction Manager, other Trade Contractors or Vendors because of delays, improperly timed activities, defective Trade Contractor Work or other errors or omissions of the Trade Contractor.

9.4 Claims. Claims and other disputes and matters in question between the Construction Manager and the Trade Contractor or Vendor shall be subject to the provisions of **Paragraphs 6.2 - 6.4.**

10. Compliance with Applicable Law

10.1 Equity Plan. 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. 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) 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 Contractor Work. The Authority also requires that the Trade Contractor utilize good faith efforts to achieve the workforce participation goals for minority and women workers regarding the Trade Contractor Work. The Authority has adopted the Equity Plan applicable to the Construction Manager to be the Equity Plan applicable to the Trade Contractor and the Trade Contractor agrees that it will follow the Equity Plan attached as **Exhibit 3** hereto and that the Equity Plan is applicable to its Trade Contractor Work. **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 Trade Contractor Work.
- .2 Identify Targeted Businesses that have the resources and capabilities to participate in the Trade Contractor Work.
- .3 Contact Targeted Businesses to solicit bids for work on the Trade Contractor Work.
- .4 Certify currently uncertified but qualified companies as Targeted Businesses for participation in the Trade Contractor Work.
- .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 Contractor Work, 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 Contractor Work may result in the assessment of appropriate damages. The Authority's Equity Plan for the Trade Contractor Work is attached as **Exhibit 3** and any references in the Equity Plan to Construction Manager shall apply to Trade Contractor.

11. Payments

11.1 Amount Payable. The Trade Contract Amount is the maximum total amount payable to the Trade Contractor for performance of the Trade Contractor Work under the Trade Contract Agreement.

11.2 Schedule of Values. The Trade Contractor shall submit to the Authority a Schedule of Values allocated to various portions of the Trade Contractor Work, prepared in such form and supported by such data to substantiate its accuracy as the Authority deems necessary. The Authority shall have the right to approve the Trade Contractor's format of the Schedule of Values and all subsequent forms of the Schedule of Values. The Schedule of Values shall be used by the Authority as a basis for reviewing the Trade Contractor's Applications for Payment.

11.2.1 Any Schedule of Values that fails to include sufficient detail, is unbalanced, or exhibits "front-end loading" of the value of the Trade Contractor Work shall be rejected. If a Schedule of Values had been initially approved and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve, exclusive of normal retainage, to complete the Trade Contractor Work.

11.3 Applications for Payment. The Trade Contractor shall submit to the Authority an itemized Application for Payment for completed portions of the Trade Contractor Work in accordance with the Schedule of Values. Such Application for Payment shall be notarized, if required, and supported by such data substantiating the Trade Contractor's right to payment as the Authority may require. Such Applications for Payment may include requests for payment on account of changes in the Trade Contractor Work that have been properly authorized by Construction Change Directives, but not yet included in a Contract Revision. Such Applications for Payment shall not intentionally include requests for payment of amounts the Trade Contractor does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason unless the Trade Contractor has properly performed the Trade Contractor Work for which payment is being requested in lieu of the Subcontractor or Supplier. By signing and submitting an Application for Payment, Trade Contractor shall represent and warrant that Trade Contractor has no Knowledge of and waives any Claims, specifically including Claims for any adjustment to the Contract Time or adjustments to the Trade Contract Amount, based on events or circumstances existing or occurring before the date of the subject Application for Payment, except as specifically stated in said Application for Payment or as may have been properly preserved by timely written notice of a Claim as required by the Trade Contract Documents. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Authority:

.1 A current Trade Contractor's waiver of lien or claim for payment and duly executed and acknowledged sworn statement showing all Subcontractors and Suppliers with whom the Trade Contractor has entered into Subcontracts, the amount of each such Subcontract, the amount requested for any Subcontractor and Supplier in the requested progress payment, and the amount to be paid to the Trade Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and Suppliers;

.2 Duly executed waivers of liens and claims for payment from all Subcontractors, Suppliers, and lower tier Sub-Subcontractors establishing payment or satisfaction of all amounts requested by the Trade Contractor on behalf of such entities or persons in the previous Application for Payment;

.3 Invoices and back-up documentation from any Subcontractor, Supplier, Sub-Subcontractor, or other party to whom the Trade Contractor proposes to make payment under that Application for Payment; and

.4 All information and materials required to comply with the requirements of the Trade Contract Documents, requested by the Authority or reasonably requested by any Lender, Lender's representative and any escrow or disbursement agent or title company, if any, retained by the Authority or any Lender to disburse payments.

11.4 Materials and Equipment. Unless otherwise provided in the Trade Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Trade Contractor Work. If approved in advance by the Authority, payment may be made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project Site shall be conditioned upon compliance by the Trade Contractor with procedures satisfactory to the Authority to establish the Authority's title to such materials and equipment or otherwise protect the Authority's interests, and shall include applicable insurance, storage, and transportation to the Project Site for such materials and equipment stored off the Project Site. Trade Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed [REDACTED] and 00/100 Dollars (\$ [REDACTED]) at any time without written approval of the Authority;
- .2 Title to such materials shall be vested in the Authority, as evidenced by documentation satisfactory in form and substance to the Authority, including recorded financing statements, UCC filings, and UCC searches;
- .3 With each Application for Payment, the Trade Contractor shall submit to the Authority a written list identifying each location where materials are stored off the Project Site and the value of materials at each location. The Authority (or the Trade Contractor, if the Trade Contractor is procuring the builder's risk insurance) shall procure insurance for materials stored off the Project Site in an amount not less than the total value thereof and shall provide the Trade Contractor (or Authority if procured by Trade Contractor) with satisfactory evidence of such insurance coverage along with the Application for Payment for such materials;
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project Site;
- .5 Representatives of the Authority and the Lender's designees shall have the right to make inspections of the storage areas at any time; and
- .6 Such materials shall be (a) protected from diversion, destruction, theft, and damage to the satisfaction of the Authority, (b) specifically marked for use in the Trade Contractor Work, and (c) segregated from other materials at the storage facility.

11.5 Title to Trade Contractor Work. The Trade Contractor warrants that title to all Trade Contractor Work covered by an Application for Payment will pass to the Authority no later than the time of payment. The Trade Contractor further warrants that upon submittal of an Application for Payment, all Trade Contractor Work for which Certificates for Payment have been previously issued and payments received from the Authority shall be free and clear of liens, Claims, security interests, or encumbrances in favor of the Trade Contractor, Subcontractors, Suppliers, Sub-Subcontractors, or other Persons able to make a Claim by reason of having provided labor, materials, and equipment relating to the Trade Contractor Work, except as specifically stated in said Application or as may have been properly preserved by timely written notice of a Claim as required by the Trade Contract Documents.

- .1 To the extent of payments received from the Authority, the Trade Contractor further expressly undertakes to defend and indemnify the Authority and the Indemnitees, at the Trade Contractor's sole expense, with independent counsel of the indemnified party's choice, against any actions, lawsuits, or proceedings brought against the Authority or any Indemnitee as a result of Claims or liens filed against the Trade Contractor, the Trade Contractor Work, the Project Site, any improvements thereon, or any portion of the property of the Authority or any Indemnitee. To the extent of payments received from the Authority, the Trade Contractor hereby agrees to indemnify and hold the Authority and all Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.
- .2 The Authority shall release any payments withheld due to a Lien if the Trade Contractor obtains security acceptable to the Authority or a bond which is: (a) issued by a surety acceptable to the Authority, (b) in form and substance satisfactory to the Authority, and (c) in an amount not less than One Hundred Fifty percent (150%) of such Lien claim. By posting a bond or other acceptable security, however, the Trade Contractor shall not be relieved of any responsibilities or obligations under this **Paragraph 11**, including, without limitation, the duty to defend and indemnify the Authority and all Indemnitees. The cost of any premiums incurred in connection with such bonds or security shall be the responsibility of the Trade Contractor and shall not be reimbursable.

11.6 Approval of Applications for Payment. 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. 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. 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 Application for Payment. 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 this Trade Contract Agreement. The Application for Payment shall show the percentage completion of each portion of the Trade Contractor Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the percentage of that portion of the Trade Contractor Work which has actually been completed. Subject to other provisions of the Trade Contract Agreement, 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 Subtract retainage of five percent (5%). The Authority may in its sole discretion approve any deviation from this requirement.

11.6.4 Subtract the aggregate of previous payments made by the Authority.

11.6.5 Subtract amounts, if any, for which the Authority has reasonably withheld or denied a Trade Contractor Application for Payment as provided in the Trade Contract Documents.

11.6.6 The Authority shall pay interest of one and one-half percent (1.5%) per month (or any part of a month) to the Trade Contractor on an undisputed amount not paid to the Trade Contractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Authority shall pay the actual interest penalty due to the Trade Contractor in accordance with Minnesota Statutes.

11.7 Decisions to Withhold Certification. The Authority may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Authority, if in the Authority's withholding is justified because of:

11.7.1 Defective Trade Contractor Work not remedied;

11.7.2 Third-party claims filed or reasonable evidence indicating probable filing of such claims;

11.7.3 Failure of the Trade Contractor to properly pay Subcontractors or Suppliers;

11.7.4 Reasonable evidence that the Trade Contractor Work cannot be completed for the unpaid balance of the Trade Contract Amount or by the required Contract Time;

11.7.5 Loss or damage incurred by the Authority or another party; or

11.7.6 Persistent failures to carry out the Trade Contractor Work in accordance with the Trade Contract Documents.

11.7.7 The Authority shall not be deemed to be in breach of the Trade Contract Documents by reason of the withholding of any payment pursuant to any provision of the Trade Contract Documents.

11.8 Joint Payments. To the extent necessary to protect the Authority from Claims, the Authority may make payment by joint payment to the Trade Contractor and the Subcontractors and Suppliers for Trade Contractor Work performed by such Subcontractors and Suppliers. Payments by the Authority shall not constitute approval or acceptance of any item of cost in the Application for Payment.

11.9 Payments to Subcontractors. If the Authority makes payment directly to the Trade Contractor for Trade Contractor Work performed by Subcontractors, then the Trade Contractor shall promptly pay each Subcontractor, in accordance with the approved Application for Payment submitted by the Trade Contractor, on account of such Subcontractor's portion of the Trade Contractor Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Subcontractor on account of such Subcontractor's portion of the Trade Contractor Work. The Trade Contractor must pay any Subcontractor within ten (10) Days of the Trade Contractor's receipt of payment from the Authority for undisputed services provided by the Subcontractor. The Trade Contractor must pay interest of one and one-half percent (1.5%) per month (or any part of a month) to the Subcontractor on any undisputed amount not paid on time to the Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Trade Contractor shall pay the actual penalty due to the Subcontractor in accordance with Minnesota Statutes. The Trade Contractor shall, by appropriate agreement with the Trade Contractor and each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors in similar manner upon receipt of payment from the Trade Contractor. The Authority shall have no obligation to pay or to see to the payment of money to a Subcontractor or Supplier.

11.10 [RESERVED]

11.11 Effect of Payment. An approved Application for Payment, Certificate for Payment, a progress payment or partial payment of any kind, or partial or entire use or occupancy of the Project by the Authority shall not constitute, nor shall it be construed as, acceptance or approval of any portion of the Trade Contractor Work not in accordance with the Trade Contract Documents or to otherwise relieve the Trade Contractor of any of its obligations hereunder with respect thereto.

11.12 Reimbursement. If the Authority is entitled to reimbursement or payment from the Trade Contractor under or pursuant to the Trade Contract Documents such payment shall be made promptly by the Trade Contractor upon demand from the Authority. Notwithstanding anything contained in the Trade Contract Documents to the contrary, if the Trade Contractor fails to promptly make any payment to the Authority which is due to the Authority, or the Authority incurs any costs and expenses to cure any default of the Trade Contractor or to correct defective Trade Contractor Work, the Authority shall have an absolute right to offset such amount against the Trade Contract Amount or any progress payment otherwise due and may, in the Authority's sole discretion, elect either to: (a) deduct an amount equal to that which the Authority is entitled from any payments then or thereafter due the Trade Contractor, or (b) issue a written notice to the Trade Contractor reducing the Trade Contract Amount by an amount equal to that to which the Authority is entitled.

11.13 Advance Payments. 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.

11.14 Reliance on Information. 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.

11.15 Certifications. The Trade Contractor is required to certify that all amounts owed and requested under the 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 Application for Payment has been completed in accordance with the Trade Contract Agreement. The Trade Contractor will be responsible for any errors or inaccuracies in the 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 they have no Knowledge of any 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 Agreement.

11.16 Subcontractor Work. Notwithstanding the provisions of **Paragraph 11.15** 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.

12. Final Completion and Final Payment

12.1 Final Completion. Upon receipt of written notice that the Trade Contractor Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Authority will promptly make such inspection and, when the Authority determines that the Trade Contractor Work is acceptable under the Trade Contract Documents, the Trade Contractor Work

has been fully performed and the Trade Contractor has achieved Final Completion, the Authority will issue the final Certificate for Payment stating the entire balance found to be due the Trade Contractor and noted in said final Application for Payment is due and payable. All warranties required under the Trade Contract Agreement shall be provided as part of the final Application for Payment. The final Certificate for Payment will not be issued until all warranties have been received and accepted by the Authority.

12.2 Final Payment. Final Payment shall be made by the Authority to the Trade Contractor when (a) the Trade Contractor has achieved Final Completion, except for the Trade Contractor's responsibility to correct defective or nonconforming Work and to satisfy other requirements, if any, which necessarily survive Final Payment; (b) a final Application for Payment has been submitted by the Trade Contractor and reviewed by the Authority's accountants; and (c) 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 Applicable 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. 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 Trade Contract Agreement; and

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

13. Safety

13.1 Safety Programs. 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's review, monitoring and coordination of the Trade Contractor's safety programs shall not relieve the Trade Contractor from controlling its safety programs. 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 Trade Contractor Work and the activities of other work in areas designated as within the control of Trade Contractor. Furthermore, the Trade Contractor agrees that the Trade Contractor will include reasonable precautions for safety of: (a) its employees on the Project and other Persons who may be affected thereby; and (b) 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 on Adjacent Property to the Project Site.

13.1.1 In addition to its defined meaning, for purposes of this **Paragraph 13.1, "Hazardous Materials"** also means any element, compound, mixture, solution, particle or substance which is or may become dangerous, or harmful to the health and the welfare of life or the physical environment if not used, stored or disposed of in accordance with Applicable Laws, including explosives, petroleum products, radioactive materials, hazardous wastes, toxic substances, any "PCBs" or "PCB items," as defined in 40 C.F.R. 761.3, and any "asbestos," as defined in 40 C.F.R. 763.63.

13.1.2 In the event the Trade Contractor encounters on the Project Site existing material reasonably believed to be Hazardous Materials which is not part of or a result of the Trade

Contract Work and has not been rendered harmless, the Trade Contractor shall immediately stop the Trade Contractor Work in the area affected and report the condition to the Authority in writing. The Trade Contractor Work in the affected area shall not thereafter be resumed except by written agreement of the Authority, and Trade Contractor, if in fact the material is a Hazardous Material and has not been rendered harmless. The Trade Contractor Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless.

13.2 Safety of Persons and Property. When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Trade Contractor Work, the Trade Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Trade Contractor shall give the Authority and the Architect reasonable advance notice in writing.

13.2.1 The Trade Contractor will take, and require its Subcontractors to take, all reasonable precautions for the protection of:

- .1 the Trade Contractor Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the Trade Contractor or the Trade Contractor's Subcontractors or Sub-Subcontractors; and
- .2 other property at the Project Site or on Adjacent Property, including the Trade Contractor Work, other Trade Contractor work, Vendor work, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or placement in the course of construction.

13.2.2 The Trade Contractor shall promptly remedy damage and loss to property referred to in **Subparagraphs 13.2.1.1** and **13.2.1.2** hereof caused in whole or in part by the Trade Contractor, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Trade Contractor is responsible under **Subparagraphs 13.2.1.1** and **13.2.1.2**, hereof, except damage or loss attributable to acts or omissions of the Authority, Construction Manager or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Trade Contractor. The foregoing obligations of the Trade Contractor are in addition to the Trade Contractor's obligations under **Paragraph 4.18** hereof.

13.2.3 When all or a portion of the Trade Contractor Work is suspended for any reason, the Trade Contractor shall securely fasten down all coverings and protect the Trade Contractor Work, as necessary, from injury or damage by any cause.

13.4 Emergencies

13.4.1 The Trade Contractor shall promptly report in writing to the Authority, Construction Manager and Architect all accidents arising out of or in connection with the Trade Contractor Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Authority, Construction Manager and the Architect.

13.4.2 In an emergency affecting safety of Persons or property, the Trade Contractor shall act, at the Trade Contractor's discretion, to prevent threatened damage, injury, or loss.

14. Trade Contractor's Insurance for Purposes of Trade Contractor's Work.

14.1 Required Insurance. Before beginning its Trade Contractor Work, the Trade Contractor shall obtain and maintain the Required Insurance as set forth in **Appendix B**, and fully comply with all provisions thereof unless additional insurance is required by a Contract Revision and/or the insurance referenced is provided through a controlled insurance program. In addition, Trade Contractor shall obtain and maintain, in a company or companies lawfully authorized to do business in the State of Minnesota, such insurance as will protect the Trade Contractor and the Authority from claims set forth below which may arise out of or result from the Trade Contractor's operations and Trade Contractor Work under this Trade Contract Agreement and for which the Trade Contractor may be legally liable, whether such operations be by the Trade Contractor or by a Subcontractor, Sub-Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Trade Contractor's Work;
- .2 claims for damages because of bodily injury, occupational sickness, disease or death of the Trade Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any Person other than the Trade Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (a) by a Person as a result of an offense directly or indirectly related to employment of such Person by the Trade Contractor, or (b) by another Person;
- .5 claims for damages, other than to the Trade Contractor Work itself, because of injury to or destruction of tangible and intangible property, including loss of use resulting therefrom whether or not the tangible or intangible property is physically injured or destroyed;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle or equipment;
- .7 to the fullest extent permitted by law, claims involving contractual liability insurance applicable to the Trade Contractor's obligations under **Paragraph 4.18** hereof, subject to industry standard policy terms and conditions;
- .8 claims for professional liability (errors & omissions) for Trade Contractor's professional design services performed as part of the Trade Contractor Work; and
- .9 claims for damages because of loss of capital equipment and tools that are owned or rented by the Trade Contractor or its Subcontractors.

14.1.1 The Trade Contractor shall, for the protection and benefit of the Authority and the Indemnitees, procure, pay for and maintain in full force and effect, at all times during the performance of the Trade Contractor Work until Final Completion and acceptance of the Trade Contractor Work or for such duration thereafter as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Authority and in form and substance reasonably satisfactory to the Authority which afford the coverages set forth in **Appendix B** hereto. The Authority does not in any way represent that the insurance or limits of insurance specified herein are sufficient or adequate to protect the Trade Contractor, but are merely minimums. If the Trade Contractor procures insurance with limits greater than as the limits specified in **Appendix B**, those greater limits shall apply.

In addition to what is specified in this **Paragraph 14** and **Appendix B**, Contractor shall take such steps as it may deem necessary to insure itself against all special and unusual hazards peculiar to this Project.

14.1.2 The costs of all insurance premiums required under this **Paragraph 14.1** and **Appendix B**, shall be included in the calculation of the Trade Contract Amount as set forth in **Exhibit 2** of the Agreement, unless the Authority elects to implement an owner controlled insurance program pursuant to **Appendix B**. The costs of all associated deductibles required under this **Paragraph 14.1** and **Appendix B**, shall be included in the Trade Contract Amount. The Trade Contractor hereby agrees to deliver to the Authority within ten (10) Days of the date of this Trade Contract Agreement and prior to any equipment or personnel being utilized in connection with the Project or the Trade Contractor Work or brought onto the Project Site, certificates of insurance evidencing the required coverages with limits not less than those specified in **Appendix B**. The receipt by the Authority of such certificates does not constitute approval or agreement by the Authority that the insurance requirements of this Trade Contract Agreement has been met or complied with. The Authority and the Indemnitees shall be included as additional insureds as set forth in **Appendix B**. The Commercial General Liability Policy, Automobile Policy, and Umbrella/Excess Liability Policy obtained under or pursuant to this **Paragraph 14.1** and **Appendix B**, shall each be primary and non-contributory to any valid and collectible insurance carried separately the Authority, or any of the Indemnitees, except for Builders Risk insurance. Further, the Trade Contractor warrants and represents that it will provide that no less than thirty (30) Days' prior written notice to the Authority and the Indemnitees before any material alteration, cancellation, non-renewal or expiration of the coverage to the insurance it obtains pursuant to this **Paragraph 14.1** and **Appendix B**.

14.1.3 In no event shall any approval or lack of approval of insurance or receipt or lack of receipt by the Authority of certificates of policies required under this **Paragraph 14.1** and **Appendix B** or failure to demand receipt of such certificates prior to the Trade Contractor commencing the Trade Contractor Work be construed as a waiver by the Authority or any of the Indemnitees of the Trade Contractor's obligations to obtain insurance pursuant to this **Paragraph 14.1** and **Appendix B**. The obligation to procure and maintain any insurance required by this **Paragraph 14.1** and **Appendix B** is a separate responsibility of the Trade Contractor and independent of the duty to furnish a certificate of such insurance policies.

14.1.4 [RESERVED]

14.1.5 Thirty (30) Days prior to the expiration or non-renewal of any insurance required by this **Paragraph 14.1** and **Appendix B**, the Trade Contractor shall supply the Authority with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required in this **Paragraph 14.1**. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Trade Contractor shall also furnish the Authority with a certified copy of the renewal or replacement policy unless the Authority provides the Trade Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Authority and written by carriers acceptable to the Authority.

14.1.6 Any general aggregate limit under the Trade Contractor's Commercial General Liability Policy and Umbrella/Excess Liability Policy shall apply to this Project separately and shall not require exhaustion of any policies providing Trade Contractor coverage as an additional insured.

14.1.7 The Trade Contractor shall cause each first-tier Subcontractor to (a) provide insurance in accordance with the terms and conditions of Trade Contractor's standard Subcontract and reasonably satisfactory to the Authority, and (b) name the Construction Manager, Architect, Authority and the Indemnitees as additional insureds under the Subcontractor's Commercial General Liability Policy. The additional insured endorsement included on the Subcontractor's Commercial General Liability Policy shall state that coverage is afforded the additional insured with respect to claims arising out of ongoing and completed operations performed by or on behalf of the Subcontractor. With the exception of any coverage provided under an Owner Controlled Insurance Program, if the additional insureds have other insurance which is applicable to the Project, such other insurance shall be, for the purposes hereof, on an excess or contingent basis. The amount of the insurer's liability under Subcontractor's insurance policy shall not be reduced by the existence of such other insurance.

14.2 Authority's Liability Insurance

14.2.1 The Authority shall be responsible for purchasing and maintaining the Authority's liability insurance in an amount to be determined by the Authority in its sole discretion.

14.2.2 With the exception of any deductibles payable pursuant to an Owner Controlled Insurance Program, any deductibles required to be paid for claims made by the Trade Contractor or Subcontractors against the Authority's liability insurance shall be paid by the claiming Trade Contractor or claiming Subcontractor.

14.3 Property Insurance

14.3.1 Before any portion of the Trade Contractor Work is commenced, the Authority shall purchase and maintain property insurance and/or builder's risk insurance in an amount and with coverages to be determined by the Authority for the Trade Contractor Work at the Project Site or portions thereof and materials stored off the Project Site or being shipped to the Project Site.

14.3.2 [RESERVED]

14.3.3 [RESERVED]

14.3.4 If the Trade Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Authority shall, if possible, include such insurance, and the cost thereof shall be charged to the Trade Contractor by appropriate Contract Revision.

14.3.5 [RESERVED]

14.3.6 [RESERVED]

14.3.7 The Authority, Architect, Trade Contractor and Construction Manager waive all rights of subrogation and claims of any sort or kind against each other and any of their respective Subconsultants, Subcontractors, Suppliers, Sub-Subcontractors of all tiers, agents, and employees, whether directly or indirectly through any means through their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees, for loss or damages caused by fire or other named perils to the extent covered by property insurance obtained pursuant to this **Paragraph 14.3** or other property insurance applicable to the Trade Contractor Work, except such rights as they have to proceeds of such insurance held by the Authority as fiduciary. The Trade Contract Documents hereby require of the Authority, Architect, Construction Manager, and Trade Contractors, if any, and their

Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees of any of them, by appropriate written agreement, to include similar waivers of subrogation each in favor of other parties enumerated herein. All insurance policies required in the Trade Contract Documents shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a Person even though that Person would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the Person or entity had an insurable interest in the property damaged. The Trade Contractor shall provide to the Authority, prior to the commencement of the Trade Contractor Work, evidence that all of the insurance policies required herein contained an appropriate endorsements as provided in this **Subparagraph 14.3.7**.

14.3.8 A loss insured under the Authority’s property insurance shall be adjusted by the Authority and made payable to the Authority for the benefit of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. Any costs, including attorneys’ fees, involved in adjusting the loss shall be reimbursed to the Authority if not covered by the property insurance. The Trade Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Trade Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-Subcontractors in similar manner.

14.3.9 [RESERVED]

14.3.10 [RESERVED]

14.3.11 Partial use shall not commence until the insurance company or companies providing property insurance have consented to such partial use by endorsement or otherwise. The Authority and the Trade Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of reduction of insurance.

14.3.12 Any deductibles required to be paid for Claims made by the Trade Contractor or Subcontractors against Authority’s Property and/or Builder’s Risk insurance shall be paid by the claiming Trade Contractor or claiming Subcontractor.

14.4 Bonds

14.4.1 Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Trade Contractor is required to provide a Payment Bond and a Performance Bond each in an amount equal to one-hundred percent (100%) of the Trade Contract Amount and in the form of **Exhibit 5** hereto and from a surety or sureties acceptable to the Authority. If after the giving of the bonds 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) Days after demand, the Trade Contractor Work shall cease until the additional bonds are furnished.

14.4.2 The Payment Bond and Performance Bond shall each comply with the following specific requirements:

.1 [RESERVED]

.2 Bonds shall be executed by a responsible surety licensed and authorized to do business in the State of Minnesota, with a Best’s Key Rating

Guide's rating of no less than A:X and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Trade Contractor Work and the payment of any disputed amounts, whichever time period is longer;

- .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Trade Contract Amount and the Performance Bond shall guarantee Trade Contractor will satisfactorily perform each and every part of the Trade Contractor Work, including all guarantees and warranties required;
- .4 Late completion shall be considered a failure of performance and any liquidated damages owed by the Trade Contractor as a result of late completion shall be covered by Trade Contractor's performance bond; and
- .5 Every Bond under this **Subparagraph 14.4.3** must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

"Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Trade Contract Documents which, singularly or in the aggregate, does not exceed One Hundred Fifty Percent (150%) of the Trade Contract Amount. Except as to increases in the Trade Contract Amount in excess of the percentage set for the above in this **Subparagraph 14.4.3.5.1**, any other addition, alteration, change, extension of time, or other Modification of the Trade Contract Documents, or a forbearance on the part of the Authority or the Trade Contractor to each other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.

Surety further agrees that in event of any default by the Authority in the performance of the Authority's obligations under the Trade Contract Agreement, the Trade Contractor or Surety shall cause written notice of such default, specifying said default in detail, to be given to the Authority, and the Authority shall have thirty (30) Days after the receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) Days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Authority.

Surety agrees that it is obligated under the bonds to the Authority and to any successor, grantee or assignee of the Authority."

14.4.3 The costs of all bonds required under this **Paragraph 14.4** shall be included in the Trade Contract Amount.

14.4.4 In any Claim involving the surety and the Trade Contractor, the surety shall be bound by and agrees to be a Party to the dispute resolution provisions in **Paragraph 6.2 – 6.4** of this Trade Contract Agreement, including arbitration.

14.5 General Insurance Requirements

14.5.1 All insurance coverages required under this **Paragraph 14** shall be provided by insurance companies having policyholder ratings no lower than “A” and financial ratings not lower than “X” in the Best’s Key Rating Guide, latest edition in effect as of the date of the respective contracts contemplated hereunder, and subsequently in effect at the time of renewal of any policies required by the Trade Contract Documents.

14.5.2 If the Authority or any Indemnitee is damaged by the failure of any other party to purchase or maintain insurance required under this **Paragraph 13**, then the party required to obtain or maintain, or to cause to be obtained or maintained, the insurance shall bear all damages and costs, including attorneys’ fees and court and settlement expenses, attributable thereto.

14.5.3 - .4 [RESERVED]

14.5.5 If any insurance required herein is to be issued or renewed on a claim-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the Trade Contractor Work and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least sixty (60) months.

14.5.6 All policies, except for the Professional Liability Policy, and Workers Compensation policies (if such waivers are not available), shall be endorsed to provide a waiver of subrogation in favor of the Authority and Indemnitees.

15. Uncovering and Correction of Trade Contractor Work.

15.1 Uncovering of Work. If a portion of the Trade Contractor Work is covered contrary to the Authority’s request or needs to be inspected by any Governmental Authority, it will be uncovered for their observation, and be replaced at the Trade Contractor’s expense without change in the Contract Time or the Trade Contract Amount. If a portion of the Trade Contractor Work has been covered which the Authority has not specifically requested to observe prior to its being covered, the Authority may request to see such Trade Contractor Work and it shall be uncovered by the Trade Contractor. If such Trade Contractor Work is in accordance with the Trade Contract Documents, costs of uncovering and replacement shall, by appropriate Contract Revision, be charged to the Authority. If such Trade Contractor Work is not in accordance with the Trade Contract Documents, the Trade Contractor shall pay such costs.

15.2 Correction of Trade Contractor Work

15.2.1 The Trade Contractor shall promptly correct Trade Contractor Work rejected by the Authority for failing to conform to the requirements of the Trade Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Trade Contractor shall bear all costs of correcting such rejected Trade Contractor Work, including additional Testing and inspections and compensation for the Authority’s or a Consultant’s services and expenses made necessary thereby and such costs shall not be considered allowable. If prior to the date of Substantial Completion, the Trade Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Trade Contractor Work, including, without limitation, mechanical, electrical, plumbing, or other building systems, machinery, or equipment, the Trade Contractor shall cause such item to be restored to “like new” condition.

15.2.2 Within two (2) years after the date of Substantial Completion of the Trade Contractor Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Trade Contract Agreement, if any of the Trade Contractor Work is found to be not in accordance with the

requirements of the Trade Contract Agreement, the Trade Contractor shall correct it promptly after receipt of written notice from the Authority to do so unless the Authority has previously given the Trade Contractor a written acceptance of such condition. This period of two (2) years shall be extended with respect to portions of Trade Contractor Work first performed after Final Completion by the period of time between Final Completion and the actual performance of the Trade Contractor Work. This obligation under this **Subparagraph 15.2.2** shall survive Final Completion and acceptance of the Trade Contractor Work under the Agreement and termination of the Agreement. The Authority shall provide such notice promptly after discovery of the improper conditions.

15.2.3 If the Trade Contractor fails to correct nonconforming Trade Contractor Work within a reasonable time, the Authority may correct it. If the Trade Contractor does not proceed with correction of such nonconforming Trade Contractor Work within a reasonable time fixed by written notice from the Authority, the Authority may remove it and store the salvageable materials or equipment at the Trade Contractor's expense. If the Trade Contractor does not pay costs of such removal and storage within ten (10) Days after written notice, the Authority may upon ten (10) additional Days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Trade Contractor, including compensation for the Architect's and the Consultant's services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Trade Contractor should have borne, the Trade Contract Amount shall be reduced by the deficiency. If payments then or thereafter due the Trade Contractor are not sufficient to cover such amount, the Trade Contractor shall pay the difference to the Authority.

15.2.4 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.

15.2.5 Nothing contained in this **Paragraph 15.2** shall be construed to establish a period of limitation with respect to other obligations that the Trade Contractor might have under the Trade Contract Agreement. Establishment of the time period of two (2) years as described in **Subparagraph 15.2.2** relates only to the specific obligation of the Trade Contractor to correct Trade Contractor Work, and has no relationship to the time within which the obligation of the Trade Contractor to comply with the Trade Contract Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Trade Contractor's liability with respect to the Trade Contractor's obligations other than specifically to correct its Trade Contractor Work.

16. Termination or Suspension by Authority

16.1 Termination or Completion of the Trade Contractor Work by the Authority for Cause. If the Trade Contractor defaults or neglects to carry out the Trade Contractor Work in accordance with this Trade Contract Agreement and fails, in the reasonable determination of the Authority, within a seven (7) Day period after receipt of written notice from the Authority to commence and continue correction of such default or neglect with diligence and promptness, the Authority may, without prejudice to other remedies the Authority may have, terminate this Trade Contract Agreement and commence and continue to carry out the Trade Contractor Work or terminate the Trade Contractor Work. The right of the Authority to terminate this Trade Contract Agreement shall not give rise to any duty on the part of the Authority to exercise this right for the benefit of the Trade Contractor.

16.2 Suspension or Termination by the Authority for Convenience. The Authority may, in its sole discretion and at any time, suspend or terminate this Trade Contract Agreement for the Authority's convenience and without cause.

16.2.1 Upon receipt of written notice from the Authority of such suspension or termination for the Authority's convenience, the Trade Contractor shall:

- .1 cease operations as directed by the Authority in the notice;
- .2 take actions necessary, or that the Authority may direct, for the protection and preservation of the Trade Contractor Work; and
- .3 except for Trade Contractor Work directed to be performed prior to the effective date of suspension or termination stated in the notice, suspend or terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders.

16.2.2 In case of such termination for the Authority's convenience, the Trade Contractor shall recover, as its sole remedy, payment for the Trade Contractor Work properly performed prior to the effective date of termination and for equipment ordered and not returnable, and proven costs of termination for the Trade Contractor such as, for example, restocking charges, non-cancelable material purchase orders, and attributable to the Trade Contractor Work actually executed. The Trade Contractor hereby waives and releases all other Claims for payment and damages, including anticipated fees, profits or lost overhead for portions of the unperformed Trade Contractor Work. The Authority shall be credited for:

- .1 payments previously made to the Trade Contractor for the terminated portion of the Trade Contractor Work;
- .2 Claims that the Authority has against the Trade Contractor under this Trade Contract Agreement; and
- .3 the value of the materials, supplies, equipment, or other items that are to be disposed of by the Trade Contractor that are part of the Trade Contract Amount.

17. General Provisions

17.1 Nondiscrimination. In connection with the performance of its Trade Contractor 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.

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. Notwithstanding anything to the contrary in this Trade Contract Agreement, it is acknowledged and agreed that the Authority shall have the right to assign all its rights and duties under this Trade Contract Agreement without the consent of Trade Contractor to third parties, including the Team and the Construction Manager. The Trade Contractor shall execute all consents reasonably required to facilitate such assignment, provided, such assignment by the Authority shall not relieve the Authority of its

obligations under this Trade Contract Agreement unless Trade Contractor agrees to a novation of the same. 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 Inspection. Inspection of the progress, quantity, or quality of the Trade Contractor Work done by the Authority, any Authority representative, any Governmental Agency, the Architect, or any inspector, shall not relieve the Trade Contractor of any responsibility for the compliance of the Trade Contractor Work with the Trade Contract Documents. The Authority or its approved representative shall have access to the work site and all Trade Contractor Work. No supervision or inspection by the Authority's representative, nor right of the Authority to act, nor any other actions taken by the Authority's representative shall relieve the Trade Contractor of any of its obligations under the Trade Contract Documents nor give rise to any duty on the part of the Authority. If any of the Trade Contractor Work is required to be inspected or approved by any Governmental Authority, the Trade Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Authority hereunder shall be a waiver of any of the Trade Contractor's obligations hereunder or be construed as an approval or acceptance of the Trade Contractor Work or any part thereof.

17.3.1 Notwithstanding **Paragraph 17.3**, the Authority will have the right to make specific elections and approve interim and final design elements, including but not limited to, the selection of equipment and the location of the equipment.

17.4 Claims Against Others Involved With Project. Should Trade Contractor have a Claim against a Person involved with the Project, who is not the Authority or an Indemnitee, then the Trade Contractor shall make such Claim directly against such other Person and not against the Authority or any of the Indemnitees.

17.5 Cost Overruns. Trade Contractor agrees and acknowledges that the Act requires the Authority to procure project construction in a manner that any cost overruns are the responsibility of the proposer and not the Authority or the State. Accordingly, Trade Contractor agrees and acknowledges that as the successful proposer, Trade Contractor is solely responsible for any cost overruns that may occur on the Project as may apply to 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.

17.6 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 (a) agrees that except for those Claims or disputes which are subject to dispute resolution requirements set forth in **Paragraphs 6.2 to 6.4** of this Trade Contract Agreement, any suit, action, or other legal proceeding arising out of the Trade Contractor Work, 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; (b) consents to the jurisdiction of such court in any such suit, action, or proceeding; and (c) waives any objection which it may have to the venue of any such suit, action, or proceeding in such court.

17.7 Project Labor Agreement. The Trade Contractor has received, reviewed, and agrees to comply with the Project Labor Agreement for the Project attached hereto as **Exhibit 6** regarding its Trade Contractor Work.

17.8 Warranty.

17.8.1 The Trade Contractor warrants to the Authority that the Trade Contractor Work will be of good quality and new unless otherwise required or permitted by the Trade

Contract Documents, that the Trade Contractor Work will be free from defects. The Trade Contractor represents and warrants to the Authority that its design and materials and workmanship, including its construction means, methods, procedures, and techniques necessary to perform the Trade Contractor Work, and its use of materials, selection of equipment, and requirements of product manufacturers are and shall be consistent with: (a) good and sound practices within the construction industry; (b) generally prevailing and accepted industry standards applicable to the Trade Contractor Work; (c) requirements of any warranties applicable to the Trade Contractor Work; and (d) all Applicable Laws. Trade Contractor Work not conforming to these requirements, including Substitutions not properly approved and authorized, shall be considered defective, and promptly after notification of non-conformance shall be repaired or replaced by Trade Contractor with Trade Contractor Work conforming to this warranty. The Trade Contractor's warranty excludes remedy for damage or defect caused by normal wear and tear under normal usage. If required by the Authority, the Trade Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

17.8.2 Trade Contractor further warrants that all materials that affect the aesthetics of finishes or equipment of a category or classification will be a product of the same manufacturer and such materials or equipment shall be of the same lot, batch, or type.

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

17.9.1 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 in **Paragraph 17.9.2.**

17.9.2 If to the Authority, addressed to:

Minnesota Sports Facilities Authority
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
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Attention: Jay R. 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
Chief Operating Officer
Fax: 952-828-6513

Minnesota Vikings Football, LLC
9520 Viking Drive
Eden Prairie, MN 55344
Attention: Steve Poppen
Chief Financial Officer
Fax: 952-828-6514

with a copy to:

Briggs and Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Attention: Mike Grimes and
Matt Slaven
Fax: 612-977-8650

with a copy to:

Garden Homes Development
820 Morris Turnpike
Short Hills, NJ 07078
Attention: Donald Becker
Stadium Project Executive

17.9.3 If to the Trade Contractor, addressed to:

Attention: _____
Fax: _____

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.

17.10 Public Project. The Parties agree and acknowledge 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.

17.11 Prevailing Wages. The Trade Contractor shall pay the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay determined for this Project, and will incorporate into this Trade Contract Agreement the applicable wage determinations for Trade Contractor Work along with language from 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. Trade Contractor shall also utilize the LCPtracker online labor tracking report at the request of the Authority. 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.

17.12 Confidentiality

17.12.1 The Trade Contractor shall keep strictly confidential all Confidential Information concerning and relating to the Trade Contract Agreement and the Project. 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 **Subparagraph 17.12**. 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.

17.12.2 As a result of the Trade Contractor and all other members of the Project Team’s participation in the Project, the Project Team will have access to information and materials of a highly sensitive nature, including Confidential Information belonging to the Authority or the Team. The Trade Contractor, hereby warrants that its employees, Subcontractors, and agents shall not (without in each instance obtaining prior written consent of the other party) disclose, make commercial or other use of, or give or sell to any Person, firm, or corporation, any Confidential Information received directly or indirectly from the Authority or the Team, as applicable, or acquired or developed in the course of the performance of the Trade Contractor Work unless: (a) required to do so pursuant to Applicable Laws (and then only after the Trade Contractor or other member of the Project Team has given the Authority or the Team, as applicable, prompt written notice of the legal compulsion and, at the Authority’s or the Team’s, as applicable, expense, provide the Authority or the Team, as applicable, with cooperation in any attempt the Authority or the Team, as applicable, may make to gain a protective order acceptable to the Authority or the Team, as applicable); or (b) it is rightfully in the possession of the Trade Contractor or other Project Team member from a source other than the Authority or the Team prior to the time of disclosure of the information to the Trade Contractor or other Project Team member under the Trade Contract Documents; or (c) it became part of the public domain prior to the time of the Trade Contractor’s or other Project Team member’s receipt; or (d) it is supplied to the Trade Contractor or other Project Team member after the time of the Trade Contractor’s or other Project Team members receipt by a third-party who is under no obligation to the Authority or to the Team to maintain such information in confidence;

or (e) it was independently developed by the Trade Contractor or other Project Team member prior to the time of receipt.

17.12.3 The Trade Contractor's or other Project Team members' confidentiality and non-disclosure obligations shall survive the expiration or earlier termination of their respective agreements and shall continue for a period of seven (7) years following the expiration or earlier termination of their respective agreements. All Confidential Information, regardless of form, shall be the property of the Authority or Team, as applicable, and shall be returned to the Authority or Team upon its request, or in any event, at the expiration or earlier termination of the Trade Contract Agreement.

17.13 Trade Secrets, Trademarks and Trade Names

17.13.1 The Trade Contractor, and Project Team acknowledge that the Authority or Team may provide the Trade Contractor and Project Team with access to certain information which may qualify as a Trade Secret under Applicable Laws, and the Trade Contractor and Project Team agree that for all such Trade Secrets that come into their possession, custody or control: (a) such Trade Secrets shall remain the sole property of the Authority or Team, as applicable, and the Architect, Trade Contractor, and Project Team shall have no interest in said Trade Secrets; (b) the Trade Contractor and Project Team shall maintain the secrecy of the Trade Secrets for so long as they remain Trade Secrets under Applicable Laws; and (c) immediately upon the expiration or earlier termination of the Project, the Trade Contractor and Project Team shall deliver to the Authority or Team, as applicable, all Trade Secret documentation and any and all copies thereof, regardless of form or content.

17.13.2 Without prior written approval of the Authority or Team, as applicable, the Trade Contractor and Project Team shall have no right to use any Trademark or Trade Name of the Authority, Team, or Affiliated Entities. Further, the Trade Contractor and Project Team shall not refer to the Trade Contract Documents or the Trade Contractor Work performed thereunder or to any Confidential Information, directly or indirectly, in connection with any production, promotion, or publication without the prior written consent of the Authority and Team, and the Authority and Team reserve the right in their sole discretion to release such information, time its release, and approve its form and content prior to release.

17.13.3 The Trade Contractor and Project Team may publish information (other than Trade Secrets and Confidential Information, which shall not be published) and images resulting from or relating to the Trade Contractor Work only after obtaining the Authority's and Team's prior written approval, which Authority and Team may grant or withhold in their sole discretion. The Authority and Team's approval, if granted, may be conditioned upon changes in the text, the use of different images, or reasonable delay in publication to protect Trade Secrets or Confidential Information and other interests of the Authority or Team.

17.14 Press Releases and Other Promotional Materials

17.14.1 Both prior to, during, and after completion of the Project, the Authority and Team shall control the issuance of all press releases and all contacts with the press and all other media relating to the Project. The Trade Contractor and Project Team may not issue any press release, agree to be interviewed by members of the press, or otherwise interact with and/or disseminate information to the press or any media without the prior written consent of the Authority and Team, which consent may be withheld by the Authority and Team in their sole discretion.

17.14.2 After completion of the Project, the Trade Contractor and Project Team may use images of the Project and explanatory text in the Trade Contractor's and Project Team

member's marketing and promotional materials, subject to the Authority's and the Team's written approval prior to the Trade Contractor's or Project Team member's first use of such materials; provided, however, that the Trade Contractor's and Project Team member's marketing and promotional materials should not include any of the Authority's or the Team's Confidential Information.

17.14.3 No signs advertising the services to be performed by the Architect, Trade Contractor, or Project Team, or identifying any Person, firm or entity concerned with the Trade Contractor Work to be performed by the Architect, Trade Contractor, or Project Team shall be allowed at the Project Site or elsewhere unless approved in writing by the Authority and the Team in advance, which approval shall be within Authority's and the Team's sole and exclusive discretion.

17.15 Ownership and Use of Architect's Drawings, Specifications and Other Documents

17.15.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Trade Contractor Work to be executed by the Trade Contractor is described and are the property of the Authority. The Trade Contractor or any Subcontractor, Sub-Subcontractor, Supplier, Trade Contractor, Vendor, or Consultant shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect. The Authority will retain all common law, statutory and other reserved rights, in addition to the copyright. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Trade Contractor or any Subcontractor, Sub-Subcontractor, Supplier, Trade Contractor, Vendor, or Consultant, are for use solely with respect to this Project. They are not to be used by the Trade Contractor or any Subcontractor, Sub-Subcontractor or Supplier, Trade Contractor, Vendor, or Consultant on other projects or for additions to this Project outside the scope of the Trade Contractor Work without the specific written consent of the Authority. The Trade Contractor, Subcontractors, Sub-Subcontractors, Suppliers, Trade Contractor, Vendors, or Consultant are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Trade Contractor Work. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Authority's copyright or other reserved rights.

17.16 Third-Party Beneficiaries. 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 Indemnitees. Notwithstanding the foregoing, the Parties hereto acknowledge and agree to the third-party beneficiary rights established in **Paragraph 17.18** herein.

17.17 Independent Contractor. 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 no authority to act on behalf of the Authority. 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.

17.18 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.

18. Entire Agreement

18.1 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.

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[SIGNATURE PAGE FOLLOWS]

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: _____

**DEFINED TERMS OF BE USED IN THE TERMS OF DESIGN AND CONSTRUCTION
APPENDIX A**

DEFINITIONS

Defined terms as used in the Trade Contract Documents shall have the following meanings:

“**Act**” shall mean 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.

“**Additional Insured Parties**” shall have the meaning set forth in **Subparagraph 9.1.15** of the Design Services Agreement.

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

“**Affiliate**” or “**Affiliated Entity**” of a specified Person shall mean any entity, corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with the Person specified. For purposes of the Trade Contract Agreement, the terms “controls,” “controlled by,” or “under common control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

“**Alternate**” shall mean a proposed possible change in the Trade Contractor Work as described in the Trade Contract Documents.

“**Applicable Laws**” shall mean any and all laws (including all statutory enactments and common law), constitutions, treaties, statutes, codes, ordinances, charters, resolutions, Orders, rules, regulations, guidelines, standards, Governmental Approvals, authorizations, or other directives or requirements of any Governmental Authority enacted, adopted, promulgated, entered, implemented, ordered or issued and in force or deemed applicable by or under the authority of any Governmental Authority having jurisdiction over a Person (or the property of such Person), including the Act and Environmental Laws, applicable to the State, County, City, Authority, Team, Architect, Construction Manager, Trade Contractor, and/or other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project. Notwithstanding the foregoing, Applicable Laws shall expressly include all requirements, regulations and administrative orders of the City, County and State, as same may be modified by variances and waivers issued in accordance with Applicable Laws.

“**Application for Payment**” shall mean the Trade Contractor’s monthly requisition for payment, if any, which shall be submitted on the form provided by the Authority.

“**Architect**” shall mean HKS, Inc., its principals, officers, employees, agents, and the permitted successors and assigns, or such other firm of licensed architects and/or engineers as may be designated by Authority from time to time. For the purpose of the Trade Contract Agreement and the Trade Contract Documents, “Architect” also includes the Architect’s Subconsultants, unless otherwise specified.

“**As-Built Drawings**” shall mean CAD generated red-lined Construction Documents showing the Trade Contractor Work as constructed, prepared by the Trade Contractor and indicating actual locations of utilities and all changes and alterations made to the Trade Contractor Work during construction. CAD files will be provided by the Trade Contractor in a format acceptable to the Authority.

“**Authority**” shall mean the Minnesota Sports Facilities Authority, a public body and political subdivision of the State of Minnesota, and its successors, assigns and designees.

“**Business Day**” or “**Work Day**” shall mean Monday, Tuesday, Wednesday, Thursday and Friday, excluding any day that banks are required to close in the State of Minnesota, and excluding Saturday and Sunday.

“**Certificate for Payment**” shall mean a written certificate executed by the Authority indicating the amount that the Trade Contractor is entitled to be paid in connection with each Trade Contractor Application for Payment.

“**Change**” shall mean an agreed-upon and materially significant Modification to the size, quality, or complexity of the Trade Contractor Work recognized and allowed by the Trade Contract Agreement that also affects the Trade Contract Amount and Contract Time.

“**Change Order**” shall mean a written order signed by the Trade Contractor, authorizing a change in a Subcontractor’s scope of Work.

“**City**” shall mean the City of Minneapolis, Minnesota.

“Claim” shall have the meaning set forth in **Subparagraph 6.2.1** of this Trade Contract Agreement.

“Conceptual Design Documents” shall mean the preliminary project work plan, programming report and pre-design documents, concept sketches and renderings illustrating the scale and relationship to the components of the Trade Contractor Work.

“Confidential Information” shall mean all Trade Secrets and other information (whether or not specifically labeled or identified as confidential), in any form or medium, which is disclosed to or learned by the Trade Contractor and/or the Trade Contractor’s Subconsultants, the Construction Manager and/or the Construction Manager’s Subcontractors, Trade Contractors or any other member of the Project Team in the performance of the Trade Contractor Work required in the Trade Contract Documents, or acquired directly or indirectly such as in the course of discussion or investigations by the Trade Contractor and the Trade Contractor’s Subconsultants relating to the Project, and which relates to the Authority or Team’s business, finances, marketing strategy, products, services, research or development, suppliers, clients, or customers, or which relates to similar information of a third-party who has entrusted such information to the Authority including, without limitation, any specialized know-how, technical or non-technical data, formula, pattern, plan, strategy, compilation, program, device, method, technique, drawing, process, financial or business information, models, novel analysis, work papers, studies or other documents that contain, reflect, or are based on such information.

“Construction Change Directive” shall have the meaning ascribed in **Paragraph 7.3** of the Trade Contract Agreement.

“Construction Documents” shall mean those deliverables to be provided by the Trade Contractor, which are necessary to complete the Trade Contractor’s Work, including, but not limited to, the Drawings and Specifications.

“Construction Documents Phase” shall mean that Phase during which the Construction Documents are being prepared by the Trade Contractor.

“Construction Manager” shall mean the legal entity with whom the Authority has contracted to construct the Stadium and Stadium Infrastructure, except work covered by this Trade Contract Agreement, separate Trade Contracts, and Vendor Contracts.

“Construction Phase” shall mean that Phase of the Project which shall commence after the Authority provides the Trade Contractor with written Notice to Proceed with the Construction Phase.

“Construction Schedule” shall mean the schedule prepared by a Trade Contractor and approved by the Authority, and all adjustments thereto approved by the Authority, that describes the sequence and timing of the Trade Contractor Work on the Project.

“Construction Services Agreement” shall mean the written agreement between the Authority and the Construction Manager..

“Consultant” shall mean a Person engaged by the Authority, Team or Trade Contractor to perform a portion of the professional services associated with the Project under direct contract with the Authority, Team or Trade Contractor.

“Consultant’s Services” shall mean the complete professional services to be provided by the Consultant and as described in a Consulting Services Agreement between the Authority, the Team or Trade Contractor and the Consultant, and includes all labor, materials, equipment and services to be provided by the Consultant to fulfill its obligations.

“Consulting Services Agreement” shall mean a contract between the Authority, the Team or Trade Contractor and a Consultant for the performance of professional services associated with the Project.

“Contamination” means the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Stadium Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances or which otherwise constitutes a violation of Environmental Laws.

“Contract Request Form” shall mean a form on which changes to the Trade Contractor Work or Contract Time are requested or on which approvals to use certain Subcontractors are requested by the Trade Contractor.

“Contract Revision” shall mean a written instrument prepared by the Authority and signed by the Authority and Trade Contractor stating their agreement upon a change in the Trade Contractor’s Work; the amount of the adjustment in the Trade Contract Agreement, if any; the extent of the adjustment in the Contract Time, if any, and the updated Schedule of Values.

“Contract Time” shall be as provided in the Trade Contract Agreement. Adjustments to the Contract Time may include adjustments to the Milestone Dates, the required date of Substantial Completion, or the required date of Final Completion, as applicable and as allowed by the Trade Contract Agreement.

“Coordination Drawings” shall mean drawings prepared by Trade Contractor and its Subcontractors detailing the Trade Contractor Work and the coordination of Trade Contractor Work items among the Trade Contractor and various Subcontractors.

“**CPM**” shall mean a Critical Path method format to be used for the Construction Schedule.

“**Critical Path**” shall mean those Trade Contractor Work activities identified on the Construction Schedule which, if delayed, will cause a corresponding Delay in the Substantial Completion Date.

“**Day**” shall mean a calendar day, unless otherwise specifically designated.

“**Delay**” shall mean any delay or interruption in the progress of the Trade Contractor Work as anticipated on the approved Construction Schedule.

“**Design Development Documents**” shall mean the Drawings, Specifications and other documents prepared by the Trade Contractor that establish and describe the size and character of the Trade Contractor Work as to architectural, civil, structural, mechanical and electrical systems, graphics and signage, and other elements, and which include typical construction details, equipment layouts and specifications that identify major materials and systems.

“**Design Development Phase**” shall mean that Phase during which the Architect prepares the Design Development Documents.

“**Design Documents**” shall mean, collectively and as applicable, the Conceptual Design Documents, Schematic Design Documents, the Design Development Documents and the Construction Documents prepared by the Trade Contractor.

“**Design Phases**” shall mean those Phases which are preparatory to the physical construction of the Trade Contractor Work during which the Schematic Design Documents, Design Development Documents and Construction Documents are being prepared by the Architect.

“**Design Services**” shall mean the complete architectural design and engineering for the Trade Contractor Work, and includes all labor, materials, equipment and services to be provided by the Trade Contractor to fulfill its obligations under the Trade Contract Agreement. The Design Services shall include all of the labor, materials, equipment and services to be provided by the Subconsultants of any tier employed directly or indirectly by the Trade Contractor, and shall include all necessary and appropriate coordination and integration of the Consultant’s Services to allow the Trade Contractor to complete the Trade Contractor Work in accordance with the Design Documents. The Design Services shall be performed in strict accordance with all provisions of the Act.

“**Design Services Agreement**” shall mean the Agreement between the Architect and the Authority for design of the Project.

“**Design Team**” shall mean Architect and its Subconsultants as set forth in the Design Services Agreement.

“**Drawings**” shall mean graphic or pictorial portions of the Design Documents prepared by Trade Contractor, Subconsultants, and Consultants, wherever located and whenever issued, which show, among other things, the design, location and dimensions of the Trade Contractor Work, generally including plans, elevations, sections, details, schedules and diagrams.

“**Electronic Data**” shall mean Design Documents and other Project, data transmitted in electronic format and as further defined in Subparagraph 1.3.1 of the Design Services Agreement.

“**Environmental Laws**” shall mean all Applicable Laws, including any consent decrees, settlement agreements, judgments, or Orders, issued by, or entered into with, a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; and (e) the protection of endangered or threatened species.

“**Final Completion**” shall mean that the Trade Contractor has satisfactorily completed all of the Trade Contractor Work in strict conformity with the requirements of the Trade Contract Agreement, the Trade Contractor Work has been finally accepted by the Authority and the Trade Contractor’s submission of and the Authority’s approval of the Trade Contractor’s Final Application for Payment.

“**Final Payment**” shall mean the last payment to the Trade Contractor, including retainage, in connection with the Trade Contractor Work.

“**Force Majeure**” shall mean an act of God, fire, tornado, hurricane, named storms, flood, earthquake, explosion, war, terrorism, embargoes, civil disturbance, unusually severe weather that is abnormal and unforeseeable for the time of year in question or industry-wide strikes.

“**Governmental Approvals**” shall mean all waivers, franchises, variances, permits, authorizations, certificates, registrations, licenses, and Orders of and from any Governmental Authority having jurisdiction over the Project, Trade Contractor Work, Stadium Site, Adjacent Property, Authority, Team, Consultant, Architect, Subconsultant, Construction Manager, Subcontractor, Trade Contractor, Vendor City, County, State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

“Governmental Authority(ies)” shall mean any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or any instrumentality of any of them having jurisdiction with respect to the Project, Trade Contractor Work, Stadium Site, Adjacent Property, Authority, Team, Consultant, Architect, Subconsultant, Construction Manager, Subcontractor, Trade Contractor, Vendor, City, County, State, and other applicable Persons in connection with the design, development, construction, equipping, commissioning, use, occupancy, possession, operation, maintenance and management of the Project or any Adjacent Property.

“Governmental Body” or **“Governmental Bodies”** shall have the meaning set forth in **Paragraph 12.10** of the Design Services Agreement.

“Guaranteed Completion Date” shall have the meaning set forth in **Exhibit 4** of the Trade Contract Agreement.

“Hazardous Materials” shall mean: (a) any “hazardous waste” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.) as amended, and regulations promulgated thereunder; (b) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.), as amended, and regulations promulgated thereunder; (c) any “hazardous waste” or “hazardous substance” as defined by applicable Minnesota State laws and regulations), as amended, and regulations promulgated thereunder; and (d) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law or any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning such waste, substance or material.

“Including” shall encompass the phrase “including without limitation” and be understood to indicate an example and not a limitation.

“Indemnitees” shall mean the Minnesota Sports Facilities Authority, Minnesota Vikings Football, LLC, Minnesota Vikings Football Stadium, LLC, Hammes Company Sports Development, Inc., Architect, Construction Manager, Lender(s), their Affiliated Entities and each of the foregoing Persons’ elected officials, appointed officials, board members, directors, officers, shareholders, subsidiaries, parent companies, members, owners, agents, representatives, legal counsel, and employees, together with the constituent partners, members, owners, shareholders, and heirs and estates of each of the foregoing, and the City and State.

“Knowledge” The terms “knowledge,” “recognize” and “discover,” their respective derivatives and similar terms in the Trade Contractor Agreement, as used in reference to the Trade Contractor, shall be interpreted to mean that which the Trade Contractor knows, recognizes, or discovers or should have known, recognized, or discovered utilizing the Standard of Care applicable to the Trade Contractor. The expression “reasonably inferable” and similar terms in the Trade Contract Documents shall be interpreted by the Authority to mean reasonably inferable by the Trade Contractor.

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

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

“Maintenance Agreement” means the Maintenance Agreement set forth on **Exhibit 8** of the Trade Contract Agreement.

“Master Project Schedule” means the schedule to be prepared by the Authority which incorporates the construction schedule developed by the Construction Manager and the Design Delivery Schedule developed by the Architect and all other activities associated with the Project.

“Milestone Date” shall mean a date in the Construction Schedule identified for its importance in measuring progress of all or part of the Trade Contractor Work.

“Modification” shall mean a writing changing the terms of a contract signed by the Parties to that contract.

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

“NFL Rules and Regulations” shall mean, collectively, the constitution and bylaws, and the rules, guidelines, regulations and requirements of the NFL, and any other rules, guidelines, directive, advisory opinions, regulations or requirements of the Office of the Commissioner of the NFL, and/or any other Person appointed by the foregoing, that are generally applicable to NFL franchises, all as the same now exist or may be amended or adopted in the future.

“Order” mean any judgment, award, decision, directive, consent decree, injunction (whether temporary, preliminary or permanent), ruling, or writ ordered adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Authority or arbitrator that is binding on any Person or its property under Applicable Laws.

“Party” or **“Parties”** shall mean the Authority and/or the Trade Contractor as applicable.

“Pending Change Report” shall mean a summary of the status of all pending requests for Contract Revisions and Change Orders that the Authority may generate from time to time.

“Person” shall mean: (a) an individual, sole proprietorship, corporation, limited liability company, partnership, joint venture, joint stock company, estate, trust, limited liability association, unincorporated association or other entity or organization; (b) any Federal, State, county or municipal government (or any bureau, department, agency or instrumentality thereof); and (c) any fiduciary acting in such capacity on behalf of any of the foregoing.

“Phase” as used herein, shall mean any one of the various phases, or distinct, contiguous portions of time, of the Trade Contractor Work.

“Project” shall mean the development, design, construction and equipping of the Stadium and the Stadium Infrastructure and any related activities in accordance with the Act.

“Project Labor Agreement” shall mean an agreement by which labor organizations agree to terms and conditions of employment, to cooperate in resolving labor disputes, and to maintain labor peace on the Project.

“Project Manual” shall mean a written volume assembled for the Trade Contractor Work by the Trade Contractor that includes specific instructions to the Project Team setting forth the requirements, policies and procedures for performance and execution of the Trade Contractor’s Design Services and Trade Contractor Work.

“Project Participant” shall mean a member of the Project Team.

“Project Safety Program” shall be developed by Trade Contractor pursuant to the Agreement and Terms of Design and Construction.

“Project Site” shall mean the site where the Project is to be constructed.

“Project Team” shall mean any Person involved in the Project and under a contract with the Authority or Team, including the Construction Manager and its Subcontractors, Sub-Subcontractors, Suppliers, Vendors, the Architect and its Subconsultants of any tier, Trade Contractors of all tiers contracted directly by the Authority and Consultants contracted directly by the Authority or Team. The Authority must be presented, and asked to provide written approval of, all agreements or contracts, consistent with the terms and conditions of the Trade Contract Documents, with any member of the Project Team before any services or Trade Contractor Work is to be provided or performed on the Project by any such member.

“Punchlist” shall mean a list, compiled by the Trade Contractor and reviewed by the Architect or Authority at Substantial Completion, and approved by the Authority, which identifies items of Trade Contractor Work that remain to be completed or corrected prior to acceptance of Final Completion.

“Record Drawings” shall mean a reproducible set of Construction Documents into which the Architect has incorporated: (a) clarifications, sketches and other Modifications made by the Architect during the Construction Phase; and (b) significant changes in the Work made during construction as shown on the Trade Contractor’s As-Built Drawings.

“Regulated Substance” shall mean any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a “hazardous substance,” “hazardous waste,” “toxic substance,” “extremely hazardous substance,” “toxic chemical,” “toxic waste,” “solid waste,” “industrial waste,” “residual waste,” “municipal waste,” “special handling waste,” “mixed waste,” “infectious waste,” “chemotherapeutic waste,” “medical waste,” “regulated substance,” “pollutant” or “contaminant” or any other substance, material or waste, regardless of its form or nature, which otherwise is regulated by Environmental Laws.

“Required Insurance” shall mean the insurance required of the Trade Contractor pursuant to the Trade Contract Agreement and Appendix B.

“Response Action” shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other response action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Stadium Site, including the correction or abatement of any violation required pursuant to Environmental Laws or by a Governmental Authority.

“Samples” shall mean physical examples that illustrate materials, items of workmanship, and which establish standards by which the Trade Contractor Work will be judged.

“Scheduled Event” shall mean any amateur or professional sporting event (other than a NFL game), exhibition, tournament, musical or theatrical performance and other form of live or broadcasted entertainment, convention meeting, market, or show for which (a) the reasonably expected paid attendance is at least 10,000 Persons and for which tickets or concessions are sold to those attending, or (b) expenses incurred with loss of such Scheduled Event would be at least \$100,000.

“**Scheduled Substantial Completion Date**” shall have the meaning set forth in **Exhibit 4** of the Trade Contractor Agreement.

“**Schedule of Values**” shall mean an allocation of the entire Trade Contract Agreement among the various portions of the Trade Contractor Work as reasonably approved by the Authority and to be provided by the Trade Contractor.

“**Schematic Design Documents**” means drawings prepared by the Trade Contractor that illustrate the scale and relationship of the various Trade Contractor Work components and which also contain square footage and volume calculations for the building interior spaces, building exterior spaces, and major architectural and interior finishes.

“**Schematic Design Phase**” shall mean that Phase during which the Schematic Design Documents are being prepared by the Trade Contractor.

“**Shop Drawings**” shall mean drawings, diagrams, illustrations, schedules, performance checks and other data prepared by the Trade Contractor or any Subcontractor to illustrate how a specified portion of the Trade Contractor Work will be constructed.

“**Specifications**” shall mean the written specifications prepared by the Trade Contractor, Architect, Subconsultants and Consultants consisting of the written requirements for materials, equipment, technical requirements and construction systems, standards and workmanship for the Trade Contractor Work, and performance of related services.

“**Stadium**” shall mean a multipurpose stadium suitable for NFL football and a broad range of other civic, community, athletic, educational, cultural, and commercial activities.

“**Stadium Infrastructure**” shall mean plazas, including the Stadium Plaza, parking structures, rights of way, connectors, skyways and tunnels, and other such property, facilities, and improvements, owned by the Authority or determined by the Authority to be reasonably necessary to facilitate the use and development of the Stadium.

“**Stadium Plaza**” shall mean the open air portion of the Stadium Infrastructure adjacent to the Stadium.

“**Stadium Site**” shall mean all or portions of the current site of the Existing Stadium and adjacent areas, bounded generally by Park and Eleventh Avenues and Third and Sixth Streets in the City of Minneapolis, together with any vacated streets or other lands acquired for the development, construction and use of the Project.

“**Standard of Care**” in regard to the professional Design Services provided by the Trade Contractor shall mean that standard of professional care, skill, diligence and quality that prevail among national design firms engaged in the planning, design, and construction administration of large scale and complex systems of similar scope, function, size, quality, complexity and detail, including the design of similar systems for NFL stadiums in comparable urban areas throughout the United States, and further including performance in accordance with Applicable Laws and the NFL Rules and Regulations.

“**Standard of Care**” in regard to the construction, installation, integration, activation of, and adjustments to, the Trade Contractor Work of the Trade Contractor shall mean that that standard of professional care, skill, diligence and quality that prevail among national firms engaged in the planning, estimating, scheduling, construction, and construction administration of large scale and complex systems of similar scope, function, size, quality, complexity and detail, including the design of similar systems for NFL stadiums in comparable urban areas throughout the United States, and further including performance in accordance with Applicable Laws and the NFL Rules and Regulations.

“**Subconsultant**” shall mean a Person engaged or to be engaged by the Trade Contractor or Architect to perform a portion of the Design Services. The term “Subconsultant” also includes any lower tier Sub-Subconsultant engaged by a Subconsultant.

“**Subcontract**” shall mean a contract between the Trade Contractor and a Subcontractor for the performance of a portion of the Trade Contractor Work.

“**Subcontract Amount**” shall mean the total amount stipulated in a Subcontract to be paid to the Subcontractor for the Subcontractor’s performance of the Subcontract.

“**Subcontractor**” shall mean a Person engaged by the Trade Contractor to perform a portion of the Trade Contractor Work. The term “Subcontractor” also includes any lower tier Sub-Subcontractor engaged by a Subcontractor.

“**Subcontractor Application for Payment**” shall mean an application for payment submitted to the Trade Contractor by a Subcontractor.

“**Submittal**” shall mean a Shop Drawing, Sample, catalog cut or similar item for specific portions of the Work as required by the Construction Documents.

“**Substantial Completion**” shall have the meaning set forth in **Exhibit 4**.

“Substantial Completion Certificate” shall mean the certificate issued and approved by the Authority indicating the date upon which the Trade Contractor Work (or a designated portion thereof) is Substantially Complete.

“Substantial Completion Date” or “Date of Substantial Completion” shall mean the date identified in the Substantial Completion Certificate when the Trade Contractor Work (or a designated portion thereof) is Substantially Complete.

“Substitution” shall mean a replacement for or alternative to an item of material or item identified in the Construction Documents which is proposed by the Trade Contractor and approved in writing by Authority.

“Sub-Subcontractor” shall mean a Person engaged by a Subcontractor to perform a portion of the Trade Contractor Work. The term “Sub-Subcontractor” also includes any lower tier Persons engaged by Sub-Subcontractor to perform a portion of the Trade Contractor Work.

“Supplier” shall mean a Person who has an agreement with the Trade Contractor, or any member of the Project Team or any of their Subconsultants, Subcontractors or Sub-subcontractors, of any tier, to supply by sale or lease, directly or indirectly, any materials or equipment for the Trade Contractor Work.

“Suspension” shall mean a delay, re-sequencing, stoppage and/or interruption of the Trade Contractor Work (in whole or in part), in response to a written directive from the Authority.

“Targeted Businesses” shall have the meaning set forth in **Paragraph 10** of the Trade Contract Agreement.

“Team” shall mean the Minnesota Vikings Football, LLC, or any Person who purchases or otherwise takes ownership or control of or reconstitutes the NFL team known as the Minnesota Vikings, and Minnesota Vikings Football Stadium, LLC.

“Termination for Convenience” shall mean the termination of the Trade Contract Agreement or the Trade Contractor Work by the Authority without cause and for the convenience of the Authority as decided in its sole discretion.

“Termination for Default” shall mean the termination of a Party under the Trade Contract Agreement by the Authority for cause.

“Testing” shall mean, performing those tests and inspections of the Trade Contractor Work to determine conformance with the Trade Contract Documents.

“Third-Party Suit” shall mean a summons and complaint served by a third-party who is not a member of the Project Team against a member of the Project Team, the Authority, or Team in a court of law.

“Trade Contract” shall mean a contract between the Authority and a Trade Contractor for the performance of a portion of the Project.

“Trade Contract Agreement” shall mean the written agreement between the Authority and the Trade Contractor.

“Trade Contract Amount” shall mean the amount to be paid to the Trade Contractor for the proper performance of the Trade Contract Agreement as set forth more fully in **Exhibit 2**.

“Trade Contract Documents” shall mean all the design and contract documents prepared by Trade Contractor that are necessary to deliver and complete the Trade Contractor Work and provide fully functioning facilities that satisfy the Trade Contractor’s obligations under the Trade Contract Agreement.

“Trade Contractor” shall mean a Person other than the Construction Manager or its Subcontractors that has a direct contract with the Authority to perform a portion of the Project.

“Trade Contractor Work” shall mean the complete and total construction or performance described in and required by the Trade Contract Documents, including preconstruction and design services and construction services, whether completed or partially completed, and includes all labor, materials, equipment and services required to be provided by the Trade Contractor to fulfill Trade Contractor’s obligations under the Trade Contract Agreement. The Trade Contractor’s Work may constitute the whole or part of the Project. The Trade Contractor’s Work includes all of the labor, materials, equipment and services to be provided by the Subcontractors, Sub-Subcontractors of any tier, material and equipment suppliers employed directly by the Trade Contractor.

“Trademark” shall mean a trademark used by the Authority that is protected under United States or International Trademark Law. Without limiting the foregoing, the term Trademark shall also have the meaning set forth in **Paragraph 1.3** of the Design Services Agreement.

“Trade Secret” shall mean any and all information that comes into the possession, custody or control by, through, from, or on behalf of the Authority or Team without regard to form, including, without limitation, any technical or non-technical data, formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, financial plan, product plan, list of actual or potential

customers or suppliers, that is not commonly known by or available to the public and which information: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“Vendor” shall mean a party supplying FF&E, equipment, material, or other product or service to the Project under a direct contract with the Authority.

“Vendor Contract” shall mean a contract between the Authority and a Vendor for the performance of a portion of the Project.

INSURANCE PROVISIONS OF THE TERMS OF DESIGN AND CONSTRUCTION

APPENDIX B

TRADE CONTRACTOR'S INSURANCE REQUIREMENTS

1. For its design and construction work for the Trade Contractor Work, the Trade Contractor shall, unless otherwise approved in writing by the Authority, obtain and maintain throughout the duration of the Trade Contract Agreement for matters that arise out of or relate to the Trade Contractor Work (or as otherwise specified) insurance of the minimum types and in the minimum amounts described below (“**Required Insurance**”).

1.1 Commercial General Liability Insurance.

1.1.1 Combined single limit of not less than:

\$2,000,000	Each Occurrence
\$4,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$100,000	Fire Legal Liability
\$10,000	Medical Payments

1.1.2 Coverage Required:

- Per project general aggregate,
- Premises-operations,
- Explosion, collapse, underground,
- Products/completed operations (to be maintained for 12 years after Substantial Completion),
- Independent contractor,
- Independent Trade Contractor's Liability,
- Blanket contractual liability, subject to industry standard terms and conditions,
- Personal injury liability,
- Employment Practice Liability (which can be provided through a separate policy)
- Electronic data liability property damage,
- General liability primary (non-contributory),
- Additional insured by endorsement (CG 20 10 10/01 and CG 20 37 10 01 or their equivalent) in a form subject to approval by the Authority including waiver of subrogation in favor of the Authority and the Indemnitees but only as arising out of vicarious liability or warranty liability imposed by law because of the acts, errors, or omissions of the Trade Contractor including additional insured coverage for both ongoing and completed operations,
- Supplementary Payments coverage for the benefit of Indemnitees of the Trade Contractor for property damage, bodily injury, and personal and advertising injury,
- Trade Contractor shall secure such endorsements or estoppel certificates from insurer as may be necessary to confirm that the Trade Contract Agreement is an insured contract for purposes of the policy,
- Designated Construction Project(s) General Aggregate Limit endorsement (CG 25 03 03 97 or its equivalent),
- Operations within 50 feet of railroad,
- Defense in addition to limits of liability,
- Broad form Property Damage coverage,
- Definition of Bodily Injury to include Mental Injury and Mental Anguish,
- Mobile Equipment coverage,
- Liability assumed under an insured contract including the tort liability of another assumed in a business contract,
- Libel, slander, false arrest and invasion of privacy,
- Designated Location(s), and

Coverage shall be written on ISO form CG 00 01 12 04 or an equivalent form. Insurance is to be on an occurrence form insuring bodily injury and property damage against the hazards of: construction operations, subcontractor and independent contractor, and shall include an aggregate limit per job site endorsement. Products and completed operation insurance shall remain in force twelve (12) years following completion of project.

1.2 Business Auto Liability Insurance.

1.2.1 Combined Single Limit of:

\$2,000,000 each Occurrence Bodily Injury and Property Damage

1.2.2 Coverage Required: Primary for all owned automobiles; including liability for all owned, leased, rented, hired/non-owned automobiles; medical payments, uninsured and underinsured motorists coverage. Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or an equivalent form.

The Authority shall be included as additional insured by endorsement in a form subject to approval by the Authority. An MCS-90 endorsement (or its equivalent) shall be attached when operations require this coverage.

1.3 Workers' Compensation Insurance.

1.3.1 Workers' Compensation Limits: Statutory

1.3.2 Employers' Liability Limits:

Bodily Injury by Accident	\$1,000,000	Each Accident
Bodily Injury by Disease	\$1,000,000	Policy Limit
Bodily Injury by Disease	\$1,000,000	Each Employee

1.3.3 Workers Compensation Insurance shall include coverage for Borrowed Servant and Alternate Employer, Voluntary Compensation, unintentional errors or omissions, FELA (in case RR worker/employee injured due to operations of contractor or their agents), The Alternative Employer endorsement shall be attached showing the Authority in the schedule as the Alternate Employer.

1.3.4 Waiver of Subrogation Endorsement in favor of the Authority.

1.4 Excess Liability Insurance with Limits of Not Less Than:

\$50,000,000	Each Occurrence
\$50,000,000	Aggregate
\$50,000,000	Products/Completed Operations Aggregate
\$10,000	Retention

Coverage is materially following form of underlying general liability, automobile liability and employers' liability, coverage including, primary, additional insured/non-contributory, and waiver of subrogation. Coverage shall have "drop down" feature and "pay on behalf of" wording. Excess policy shall be primary and any applicable policy by the Authority, Additional Insureds, Indemnitees, or Subcontractors, shall be secondary and non-contributory.

1.5 Builder's Risk. All Risk Form. Builder's Risk coverage at limits determined by the Authority will be provided by the Authority.

The Trade Contractor shall be provided a copy of the Builder's Risk policy before the Construction Phase of the Trade Contractor Work begins and the Trade Contractor will be named as a loss payee under said policy as its interest may appear at the time of loss.

1.6 Contractor's Professional Liability.

\$5,000,000	Limit of Insurance
\$5,000,000	Annual Aggregate
\$500,000	Retention

Coverage shall be maintained uninterrupted for a minimum of twelve years after Substantial Completion. Coverage shall apply to negligent acts, errors or omissions arising from the Trade Contractor's professional services defined to include architecture, engineering, land surveying, landscape architecture, and construction management (or other services if appropriate). The retro date will be prior to the commencement of Trade Contractor Work. This coverage must be primary and non-contributory to any coverage maintained by the Authority or an Indemnitee.

1.7 Contractor's Pollution Liability.

1.7.1 Combined Single Limit of Not Less Than:

\$5,000,000 each Claim/\$5,000,000 Aggregate

- 1.7.2 The Authority and all Indemnitees specified in the Trade Contract Agreement shall be named as Additional Insureds to the fullest extent allowed by Applicable Law, by endorsement in a form subject to approval by the Authority.
- 1.7.3 Coverage shall apply to bodily injury or property damage arising from a pollution incident or event caused by the Trade Contractor's activities. No exclusion for mold, fungus, or microbial matters of any kind.
- 1.7.4 Coverage must be maintained for twelve (12) years following completion of the Project.
- 1.7.5 Coverage shall include sudden and accidental pollution and/or discharge of contaminants.

1.8 Property Insurance/Contractor's Equipment

Trade Contractor shall insure its own property and equipment (owned, rented or borrowed) including but not limited to tools, materials, supplies, equipment, forms, scaffolding towers, staging, bunkhouses, and other temporary structures including their contents except for such contents as are to be included in and remain a part of the permanent construction. Trade Contractor shall require its Subcontractors to similarly insure their property and equipment.

- 2. The Authority does not represent or warrant that coverage and limits of the Required Insurance will be adequate to protect the Trade Contractor, and such coverage and limits shall not be deemed as a limitation on the Trade Contractor's liability under the indemnities provided to the Authority and Indemnitees in the Trade Contract Agreement or any other provision of the Trade Contract Documents.
- 3. The Trade Contractor represents and warrants that the coverage and limits of the Required Insurance are the coverage and limits currently maintained by the Trade Contractor.
- 4. Prior to commencing the Trade Contractor Work, the Trade Contractor shall furnish the Authority with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing that the Trade Contractor maintains all Required Insurance.
 - 4.1 All certificates shall contain a provision that coverages afforded under the policies will not be cancelled, non-renewed, materially changed, or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Authority. The Trade Contractor shall immediately furnish the Authority copies of all endorsements that are subsequently issued amending coverage or limits.
 - 4.2 The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation or material change of any insurance referred to therein.
 - 4.3 Failure of the Authority to demand such certificate or other evidence of full compliance with the Required Insurance or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Trade Contractor's obligation to maintain such insurance.
- 5. The Authority shall have the right, but not the obligation, to prohibit the Trade Contractor from entering the Project Site until such certificates or other evidence that the Required Insurance has been duly placed in compliance with this Appendix B. The Trade Contractor shall be responsible for any delays arising out of the Trade Contractor's failure to comply with this Appendix B.
- 6. If the Trade Contractor fails to maintain any or all of the Required Insurance, then, in addition to any other rights or remedies available to the Authority under the Agreement, the Authority shall have the right, but shall not be obligated, to (a) terminate the Trade Contract Agreement, or (b) purchase such insurance for the Trade Contractor in which event the Trade Contractor shall reimburse the Authority or provide for the cost thereof, plus ten percent (10%) as an administrative charge.
- 7. With respect to the Required Insurance, which the Trade Contractor is obligated to maintain after Substantial Completion, an additional certificate(s) evidencing such coverage shall be promptly provided to the Authority when requested.
- 8. Trade Contractor shall provide certificates of insurance evidencing the insurance coverage and policy limits required above prior to commencement of the Trade Contractor Work and thereafter shall provide insurance certificates or certified copies of insurance policies as may be specified by the Authority within ten (10) Days of the Authority's written request for said certificates or copies.
- 9. Trade Contractor will require Subcontractors to provide insurance in accordance with the terms and conditions of its standard Subcontract Agreement. Trade Contractor shall include the above additional insured and waiver of subrogation requirements in all of its Subcontracts, unless otherwise agreed to in writing by the Authority. The Trade Contractor shall be responsible for collecting certificates of insurance and monitoring insurance coverage of its Subcontractors and all lower tier Sub-Subcontractors to verify that the required coverage is maintained as required. All Subcontractors providing professional services shall be required to provide professional liability insurance. In addition, all Subcontractors shall include the same indemnification of the Authority and Indemnitees as provided in the Trade Contract Agreement.

10. Trade Contractor shall secure all Required Insurance from domestic insurer(s) authorized to do business in the State of Minnesota and reasonably satisfactory to the Authority with: (a) a claims paying ability of not less than “AA” (or the equivalent) by Standard & Poors and one other Rating Agency satisfactory to the Authority; and (b) “A:X” or better financial strength rating by AM Best. Trade Contractor shall promptly notify the Authority of any material changes in coverage for all insurance required herein. All coverages except Professional Liability insurance shall be occurrence based. Insurance shall contain such provisions as the Authority deems reasonably necessary or desirable to protect its interest, including endorsement stating that neither the Trade Contractor, the Authority, nor any other party shall be deemed a co-insurer. The Trade Contractor shall pay the premiums for all insurance when due and payable.

11. Owner Controlled Insurance Program (OCIP)

11.1 **Reservation.** The Authority has elected to implement an General Liability (GL) only Owner Controlled Insurance Program on this Project. This consolidated purchasing of insurance is known as an Owner Controlled Insurance Program (OCIP) and will include General Liability and Excess/Umbrella Liability coverage. A general description of the GL only OCIP is attached to this Appendix B as Attachment 1 and Trade Contractor acknowledges and agrees that it has reviewed, accepts, and will participate in the OCIP. Under this type of program, the Authority will centralize the purchase of general liability insurance for activities of the Construction Manager, Trade Contractors, Subcontractors, and all Sub-Subcontractors for Trade Contractor Work performed at the Project Site. Builder’s Risk insurance coverage will be provided under a separate program. Participation in the OCIP will be mandatory for all tiers of Contractors and Subcontractors unless specifically excluded in writing by the Authority. The Authority also reserves the right to not implement an OCIP at any time.

11.2 **Insurance Credit.** The Authority and its OCIP Administrator will pursue and be entitled to receive from the Trade Contractor an insurance deduction for the Trade Contractor’s, the Subcontractors’ and Sub-Subcontractors’ General Liability and Excess Liability insurances which are provided under the OCIP, which shall be credited to the Authority against the GMP. This credit shall be known as the “Insurance Credit.” The following Subparagraphs are a proposed outline of a potential OCIP program and are subject to Modification as insurance is placed and during negotiation of the Construction Management Plan.

11.2.1 The Trade Contractor shall be responsible to provide and to require each Subcontractor and Sub-Subcontractor to separately provide an identification and designation in their bids or proposals of all of their General Liability and Excess Liability insurance costs. A 15% factor for profit and overhead on all insurance credits will be applied as part each Subcontractor’s and Sub-Subcontractor’s overall insurance deduction credit. Deductible or self-retention credits or self-insured amounts may be identified in the designation required by this **Subparagraph 11.2.1**, but will not be allowed for inclusion in the insurance deduction credit rates.

11.2.2 The Trade Contractor, and all Subcontractor and Sub-Subcontractor bidders shall submit their bids or proposals with their insurance costs included for this Project, including a designation of the costs to provide General Liability and Excess Liability for this Project.

11.2.3 The Trade Contract Amount will be reduced by the Insurance Credit. The Insurance Credit initially shall include and be based on all insurance costs designated by the Trade Contractor, Subcontractor and Sub-Subcontractors pursuant to **Subparagraph 11.2.1**. Before retainage is released to the Trade Contractor, a Subcontractor, or a Sub-Subcontractor, and at such other times that the Authority may require, the Authority, with the assistance of the OCIP Administrator, shall conduct an audit of all payrolls, and other relevant records, which the Trade Contractor, Subcontractor, and Sub-Subcontractor agree to produce upon demand made during normal business hours, to determine whether any additional insurance deductions are due and owing to the Authority as part of the Insurance Credit so that all of the Trade Contractor’s, Subcontractor’s, and Sub-Subcontractor’s insurance costs are captured in the Insurance Credit. The final Insurance Credit will be based on actual payrolls including any and all Contract Revisions for Changes in the Work. The Authority shall have the right to apply retainage against the Insurance Credit, and to the extent that determination of the final Insurance Credit results in monies being owed to the Authority, such shall be paid on demand.

11.2.4 For the Trade Contractor, and each Subcontractor, and Sub-Subcontractor, the Authority with the assistance of the OCIP Administrator shall determine an insurance credit rate that will apply to facilitate the calculation of the Insurance Credit due from the Trade Contractor. The Trade Contractor, and each Subcontractor and Sub-Subcontractor shall be required to provide their bid estimates to the Authority and OCIP Administrator so that the estimated man-hours used can be verified for purposes of determining the insurance credit rate. In addition,

.1 Calculations will be based upon the rates that were effective at the time of award, and shall include the Insurance Credit information for all tiers of Subcontractors, and in the absence of a known Subcontractor or Sub-Subcontractor for a particular scope of work, 3.0% of the bid or proposal value will be used to estimate the initial Insurance Credit. Deductible or self-retention credits or self-insured amounts may be identified but will not be allowed for inclusion in the insurance deduction rates. Policies using composite rates must show, at a minimum, the deductible/self-retention/self-insured

amount and the rating breakdown. If the credit percentage is not available, minimum and maximum rates for the program must be identified. Corporate allocations will not be allowed. Any rate credits (other than credits for deductibles or self-retention or self-insured plans) or surcharges shown on the declaration and/or rating sheets will be used to verify actual cost and determine the insurance deduction necessary to compute the Insurance Credit.

.2 Once the insurance credit rate is determined, the Authority with the assistance of the OCIP Administrator will use that rate as the basis to determine the Insurance Credit for the duration of the contract, and such rate will not be modified.

.3 The Authority with the assistance of the OCIP Administrator will develop a loss cost allocation/rate based upon the Trade Contractor's, Subcontractor's or Sub-Subcontractor's experience outside of the OCIP. In the event that the loss experience develops a loss rate that is less than 50% of the self-insured retention (deduction or SIR) it will be assumed that the full deductible has been included by line of coverage and this will be included in the insurance credit rate.

11.2.5 The Trade Contractor, Subcontractor, and Sub-Subcontractor shall comply with all requests for information made by the Authority and OCIP Administrator for the purpose of conducting the audit pursuant to **Subparagraph 11.2.2** or determining the credit rate pursuant to **Subparagraph 11.2.3**.

11.2.6 Each Construction Manager, Trade Contractor, Subcontractor and Sub-Subcontractor enrolled in the OCIP must provide the following documentation:

- .1 Workers' Compensation Policy Declarations Page;
- .2 Workers' Compensation Rating/Information Page(s);
- .3 Workers' Compensation Experience Modification Worksheet;
- .4 General Liability Policy Declarations Page;
- .5 General Liability Rating/Information Page;
- .6 Excess Liability Policy Declarations Page; and
- .7 Excess Liability Rating/Information Page(s).

The foregoing shall be subject to the Authority's review and approval, which shall not unreasonably be withheld. Insurance broker and agent summary letters will not be accepted as proof of insurance.

11.2.7 Failure to comply with the procedures in this **Paragraph 11.2** may result in any or more of the following non-exclusive list of consequences:

- .1 The Authority may deny admission to the Project Site until compliance is obtained.
- .2 The Authority may withdraw or deny insurance provided by the OCIP.
- .3 The Authority may withhold progress payments until compliance is obtained.
- .4 The Authority may apply standard premium rates for Worker's Compensation and General Liability and Excess Liability insurance for the particular trade description. An experience modification of 1.0 will be applied to the Worker's Compensation Rate to determine the Insurance Credit.
- .5 The Authority may apply a minimum Insurance Credit of 3.0% of the Trade Contract Agreement in the case of the Trade Contractor, or 3% of the value of a Subcontract or Sub-subcontract.

**ATTACHMENT 1
TO
APPENDIX B**

See attached Owner Controlled Insurance Program Manual Version #3 prepared by Willis dated 1/3/14.

Minnesota Multipurpose Stadium Project

MINNESOTA SPORTS FACILITIES AUTHORITY MINNESOTA VIKINGS FOOTBALL, LLC

**M.A. Mortenson Company –
Construction Manager**

Minnesota Multipurpose Stadium Project

**GENERAL LIABILITY – ONLY
OWNER CONTROLLED INSURANCE PROGRAM MANUAL**



VERSION #3

January 3, 2014

Willis of Minnesota

Willis

Minnesota Multipurpose Stadium Project

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Minnesota Multipurpose Stadium Project

SECTION 1

OVERVIEW

Minnesota Sports Facilities Authority (Sponsor) has elected to implement an Owner Controlled Insurance Program (OCIP) for Enrolled Contractors providing direct labor at the Project Site. The Sponsor agrees to pay all premiums and deductibles for coverages provided by the OCIP.

The insurance coverage provided by the OCIP, as well as your rights and responsibilities under the program, is outlined in this OCIP Manual (the "Manual") and are as much a part of your Construction Services Agreement / Contract as the actual work specifications. All terms and conditions of this Manual are incorporated by reference into your Construction Services Agreement / Contract, and you are required to bind all your lower-tiered subcontractors to the terms, conditions and requirements of this Manual.

WHAT IS AN OCIP?

An Owner Controlled Insurance Program (OCIP) is a master insurance, safety and claims management program that provides specific coverages for the Owner and all Enrolled Contractors while performing work at the Project site. The Owner pays the premiums for the OCIP Coverages. The advantages of an Owner Controlled Insurance Program include:

- Uniform insurance protection and dedicated limits;
- Extended completed operations coverage;
- Centralized safety, loss prevention and claims management; and
- Reduction of potential litigation between contractors.



PARTICIPATION IS MANDATORY, except for Excluded Contractors, as defined herein, BUT IT IS NOT AUTOMATIC. Each Eligible Contractor must follow enrollment procedures as described in Section 6.

HOW TO BID?

In consideration of the insurance coverage provided by the Sponsor, each Contractor will submit its bid price for the original scope of work and subsequent change orders inclusive of insurance costs. Each contractor shall complete the Cost Identification Worksheet to identify the cost of insurance coverage provided by the Sponsor for work performed at the Project Site. **In calculating insurance costs, Contractors shall use the limits of insurance specified in the Contractor Required Coverage section of this Manual.** Once the identified cost for insurance coverages is verified and approved by the OCIP Administrator and Sponsor, a deductive change order is issued to deduct this cost.

Minnesota Multipurpose Stadium Project

Requirements for determining the cost of insurance are further defined in Section 6.

WHAT IS REQUIRED TO START WORK?

Contractors shall NOT commence work on the Project Site until:

(a) If Eligible Contractor:

- Having complied with enrollment requirements and received a Certificate of Insurance issued by the OCIP Administrator confirming they are Enrolled.
- Having provided the OCIP Administrator a Certificate of Insurance to evidence coverage as required in such Contractor's Contract and Section 5 of this manual.


(b) If Excluded:

- Having provided Certificate(s) of Insurance to the Construction Manager and OCIP Administrator which evidence all required insurance coverages.

NOTE: Contractors must enroll for each Agreement / Subcontract awarded.

WHAT IS THE PURPOSE OF THIS MANUAL?

This manual, which is part of your contract documents, details OCIP procedures, coverages and Contractor insurance requirements.

 **NOTE: This Manual does not, and is not intended to, provide coverage interpretations or complete information about coverages. The terms and conditions of the insurance policies will govern how coverage is applied. The information herein is not intended to alter any provisions of the actual contract documents of the Contractors, and if any such conflict occurs, the contract documents will govern.**

The OCIP Manual may only be updated during the course of the Project by the Sponsor and distributed by the OCIP Administrator and is subject to review and final approval by the Sponsor. Any revised versions shall replace and supersede any previous versions.

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SECTION 2

PROGRAM DIRECTORY

SPONSOR

**Minnesota Sports Facilities Authority
Minnesota Vikings Football, LLC**

OCIP Administrator

Denise Wishcop
Willis of Minnesota

Phone: 763-302-7101
Fax: 763-302-7200
Email: denise.wishcop@willis.com

Gwen McFadden
RMCS

Phone: 952-544-0354
Fax: 952-544-0357
Email: gwen@rmcsllc.com

OCIP Client Advocate

Chris Lorsung
Willis of Minnesota

1600 Utica Avenue South, Suite 600
Minneapolis, MN 55416
Phone: 763-302-7182
Fax: 763-302-7200
Email: chris.lorsung@willis.com

OCIP Safety Consultant

Dale Dhooge
Willis of Minnesota

1600 Utica Avenue South, Suite 600
Minneapolis, MN 55416
Phone: 763-302-7256
Fax: 763-302-7200
Email: dale.dhooge@willis.com

OCIP Claims Consultant

Marty Berger
Willis of Minnesota

1600 Utica Avenue South, Suite 600
Minneapolis, MN 55416
Phone: 763-302-7154
Fax: 763-302-7200
Email: marty.berger@willis.com

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CLAIMS REPORTING CONTACTS

Report General Liability claims to:

Ryan Kane
Risk Manager – Mortenson
Phone: 763-287-5126
Cell: 612-812-3900
Email: ryan.kane@mortenson.com

In addition to complying with all Construction Manager requirements regarding claim reports, send Copies of all Claims to:

Mary Fox-Stroman
Director of Finance - MSFA
Phone: 612-335-3311
Cell: 763-300-3369
Email: mary.fox-stroman@msfa.com

Marty Berger
OCIP Claims Consultant
Willis of Minnesota
Phone: 763-302-7154
Cell: 612-812-9474
Email: marty.berger@willis.com

Minnesota Multipurpose Stadium Project

SECTION 3

DEFINITIONS

Bid Gross Program	Contractor's original scope of work and subsequent change orders will be bid with insurance costs included. Each Contractor shall complete the Enrollment Form to identify the cost of insurance coverage provided by the Sponsor for work performed at the Project Site. Once the identified cost for insurance coverages is verified and approved by the OCIP Administrator and Sponsor, a deductive change order is issued to deduct this cost.
Contract	As respects the OCIP, the Construction Services Agreement/Subcontract by and between Sponsor and the Contractor (the "Construction Services Agreement/Subcontract"); or between the Contractors and their Subcontractors; or between the Subcontractors and their lower tiered subcontractors.
Contractor	As respects the OCIP, "Contractor" includes: construction managers, prime contractors, general contractors, trade contractors, joint venture entities and subcontractors of all tiers that perform work on the Project Site.
Owner Controlled Insurance Program (OCIP)	A coordinated master insurance, safety and claim management program, under which Commercial General Liability and Excess Liability are procured or provided on a project basis for all Enrolled Contractors while performing operations at the Project Site.
Eligible Contractors	Contractors and Subcontractors of all tiers performing labor or services at the project site are eligible to be enrolled in the OCIP. Suppliers that perform or subcontract installation, temporary labor services, employee leasing companies providing direct labor, joint ventures and all joint ventures partners are considered Eligible Contractors. The Sponsor may, at its discretion, include a Contractor who otherwise, by definition, would be an Excluded Contractor.
Enrolled Contractors	Contractor(s) and Subcontractor(s) of any tier who have been awarded work, who have submitted all necessary enrollment forms, have met all enrollment requirements and have been issued a Certificate of Insurance by the OCIP Administrator.

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Excluded Contractors

Contractors or companies excluded from the OCIP:

- Vendors, suppliers (who do not perform or subcontract installation at the Project Site), material dealers, manufacturing representatives, equipment and rental companies who perform equipment maintenance (does not apply to those who provide operators);
- Contract haulers or truckers (or others who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the project site);
- Asbestos abatement or other hazardous materials remediation;
- Architects, surveyors, soil testing contractors and their consultants;
- Contractors whose sole scope of work includes Exterior Insulation and Finish Systems;
- Contractors whose sole scope of work includes blasting and/or implosion;
- The Sponsor may at its discretion exclude others from the OCIP.

Project or Project Site

The premises, as designated in the Construction Services Agreement between the Owner and the Construction Manager and approved by the insurance carrier, including operations necessary or incidental to the Project Site which may be non-contiguous, i.e., staging or storage yards, project offices and adjacent utility work. This does not include Contractors' regularly established workplace, plant, factory, office, shop, warehouse, or permanent yards.

Sponsor

The Minnesota Sports Facilities Authority is the entity that determines which insurance coverages will be included, procures the policies and controls the insurance program.

Sponsor Provided Coverage

OCIP INSURANCE COVERAGE

This section provides a brief description of the coverages provided under the OCIP. The Contractor shall refer to the actual policies for details concerning coverages, exclusions and limitations. Copies of the General Liability and Excess Liability policies will be provided upon request.

The Sponsor has procured and will maintain the insurance coverages described below for the Enrolled Contractors. The Sponsor intends to maintain coverages until the expiration of the policy or the project has been accepted by the Sponsor as complete, whichever occurs first; however, in no event beyond the expiration date of the policy. Coverage is primary and non-contributory with respect to any other insurance carried by the Enrolled Contractor.

While the OCIP provides uniform coverages and reasonable limits, the OCIP is not intended to meet all the insurance needs of the Enrolled Contractors. Contractor shall discuss the OCIP with its insurance agent or consultant to assure that proper coverages are maintained. Contractor shall notify its agent that the work performed on-site will be insured under the OCIP. This notification is to inform the Enrolled Contractor's standard insurance company(ies) that the insurance coverages provided under the OCIP are primary on the project site.

Commercial General Liability: (Coverage for Off-site operations is excluded unless locations are scheduled & approved by the Sponsor and OCIP insurance carriers).

	Limits of Liability
Each Occurrence Limit	\$2,000,000
General Aggregate Limit	\$4,000,000
Products/Completed Operations Aggregate	\$4,000,000
Personal and Advertising Injury Limit	\$2,000,000
Damages to Premises Rented to You Limit	\$500,000
Medical Expense Limit	\$10,000

- Policy provides Completed Operations Extension coverage for twelve (12) years after project completion.
- **Limits shared by All Enrolled Contractors**
- The Completed Operations Aggregate is a single limit for the extension period.
- **Callback / Warranty Work Coverage Extension**
The OCIP provides coverage for general liability claims which result from callback or warranty work undertaken by Enrolled Contractors for a period of 24 months after completion of their work. Note that injuries to Contractor employees performing this work shall be covered under the Contractor's own Workers' Compensation policy.

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A master General Liability policy will be issued for all Enrolled Contractors naming all Enrolled Contractors as Named Insureds and is available for review upon request.

Excess Liability: (Coverage for Off-site operations is excluded)

Limits of Liability

Each Occurrence Limits	\$200,000,000
Annual General Aggregate	\$200,000,000

- Policy provides Completed Operations Extension coverage for twelve (12) years after project completion.
- **Limits shared by all Enrolled Contractors**

A master Excess Liability policy will be issued for all Enrolled Contractors naming all Enrolled Contractors as Named Insureds and copies will be provided upon request.

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Evidence of Coverage

Certificates of Insurance will be issued to each Enrolled Contractor by the OCIP Administrator evidencing the OCIP coverage described above. Contractor agrees to be bound by the terms and conditions of the OCIP policies.

Contract Termination

Upon expiration of the OCIP, Contractors whose practice policies have been endorsed with a Designated Workplace Exclusion Endorsement should advise their broker/agent of the completion of the work and request the endorsement be deleted from their policies.

The Sponsor has elected to provide extended callback / warranty coverage. General Liability exposures will continue to be covered under the OCIP for a period of 24 months after completion of their work while the Enrolled Contractor is performing callback / warranty work at the Project Site. All other exposures shall be covered by the Enrolled Contractor's practice policies.

OCIP Termination / Modification

The Sponsor reserves the right to terminate or modify the OCIP or any portion thereof. The Sponsor will provide **thirty (30) days** advance written notice of termination or material modification to the Enrolled Contractor(s) covered by the OCIP. In such event, the Enrolled Contractor(s) will be required to immediately acquire replacement insurance coverage, as required in the Construction Services Agreement or the applicable Subcontract terms and conditions. Written evidence of such insurance will be provided to the Sponsor, the Construction Manager, and the OCIP Administrator prior to the effective date of the termination or modification of the OCIP coverages. The reimbursement for the cost of such replacement insurance will be calculated on a pro-rata portion of the Enrolled Contractor's approved enrollment forms.

Waiver of Subrogation and Rights of Recovery: Except for the amount of the deductibles as described elsewhere, the Sponsor and the Enrolled Contractors, each on their own behalf, whether by way of subrogation or otherwise, hereby waive any and all rights of recovery of any kind which they may now, or hereafter have, against the Sponsor, each other and their parent, related and affiliated companies, the successors and assigns of each other, in connection with the performance of the work and to the extent claims, loss or damages are covered under the OCIP. Each contractor shall require all subcontractor(s) to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work.

CONTRACTOR REQUIRED COVERAGE

To the extent that an applicable Subcontract has insurance requirements that are greater than those required herein, the terms and conditions of the Subcontract agreement take precedent over those contained herein. These required coverages are meant to be minimum requirements, and are not intended to replace any insurance requirements in the applicable Subcontract agreement.

All Contractors, whether Enrolled or Excluded, are required to maintain, at their own expense and for the duration of the project, the following coverages. Excluded contractors must be properly insured to protect themselves, the owner/sponsor and other contractors in the event of an accident. The limits shown below are minimum limits and are not intended to limit the Contractors' liability. Contractor's limits may be increased or decreased at the discretion of the Construction Manager or OCIP Administrator.

All Enrolled Contractors and Excluded Contractors shall maintain and shall require each of their Subcontractor(s) to obtain and maintain all insurance requirements.

Workers' Compensation and Employers Liability:

All Contractors must provide Workers' Compensation and Employer's Liability insurance covering all employees for ALL operations.

Part One – Workers' Compensation

Statutory Limit

Part Two – Employers' Liability

Bodily Injury by Accident, each accident	\$1,000,000
Bodily Injury by Disease, each employee	\$1,000,000
Bodily Injury by Disease, policy limit	\$1,000,000

- Alternate Employer Endorsement naming the Authority as Alternate Employer
- Confirmation must be provided that coverage applies in the State of Minnesota

The policy must be endorsed to include US Longshoreman Harbor Workers Act or Maritime Liability as appropriate and a Waiver of Subrogation in favor of the Sponsor and other entities, as required by contract. A copy of the Waiver of Subrogation endorsement must be attached to the Contractors' Certificate of Insurance.

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Commercial General Liability:

All **Enrolled Contractors** must provide General Liability insurance covering third-party losses that occur AWAY from the Project Site (including products liability for any product manufactured, assembled or otherwise worked upon away from the Project Site) or after project completion or OCIP termination, expiration or cancellation. **Excluded Parties** must provide this coverage for ALL operations, with limits not less than:

	Construction Manager	Contractor(s) and Subcontractor(s)
Each Occurrence	\$2,000,000	\$ 2,000,000 or as required by contract
Personal & Adv Injury	\$2,000,000	\$ 2,000,000 or as required by contract
General Aggregate (<i>per project</i>)	\$4,000,000	\$ 2,000,000 or as required by contract
Products – Comp/Op Agg	\$2,000,000	\$ 2,000,000 or as required by contract

- Occurrence Form, ISO CGL – CG0001 12 04 or equivalent
- Name the Sponsor and any other entities, as required by contract, as Additional Insureds and must state that coverage is afforded on a primary and non-contributory basis. In addition, the General Liability Additional Insured Endorsement provided as ISO CG 20 10 07 04 and ISO CG 20 37 07 04, or its carrier equivalent.
- Products/Completed Operations for twelve (12) years after completion of the project.
- Operations within 50 feet of railroad
- Any deductibles will be the responsibility of the Contractor.
- The policy must be endorsed to include a Waiver of Subrogation in favor of the Sponsor and any other entities, as required by contract.
- If an Enrolled Contractor chooses to have its practice policy endorsed to include the Project Site during the construction period, coverage for the Contractor shall be on an Excess and/or Difference In Conditions basis with respect to the OCIP coverage. Inclusion of the Project Site on the Contractor's policy shall not replace the OCIP coverages or otherwise affect the cost identification requirements described in Section 6.

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Commercial Automobile Liability

Commercial Automobile Liability insurance shall cover the ownership, maintenance, use, loading and unloading of all vehicles owned, hired or used by, or on behalf of, the Contractor on or away from the Project Site. Such insurance will provide coverage not less than that of the standard Commercial Automobile Liability policy in limits not less than:

The policy shall be endorsed to provide a Waiver of Subrogation in favor of the Sponsor and any other entities as required per written contract and the Sponsor and any other entities as required by contract must be added as Additional Insureds.

	Construction Manager	Contractor(s) and Subcontractor(s)
Combined Single Limit (Each accident)	\$2,000,000	\$2,000,000 or as required by contract

- Contractual liability, if not provided in the policy form, is to be provided by endorsement.
- If hazardous materials or waste are to be transported, the Commercial Automobile Liability policy will be endorsed with the MCS-90 or other equivalent endorsements in accordance with the applicable legal requirements.

Umbrella/Excess Liability:

Umbrella/Excess Liability insurance, Coverage must be materially follow form and must apply as excess of the coverages as specified in this section. Coverage shall have “drop down” feature and “pay on behalf of” wording. The limits of liability shall not be less than:

	Construction Manager	Contractor(s) and Subcontractor(s)
Each Occurrence	\$100,000,000	N/A or as required by contract
Aggregate	\$100,000,000	N/A or as required by contract
Products and Completed Operations Aggregate	\$100,000,000	N/A or as required by contract

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The General Liability, Employers Liability and Automobile Liability limit requirements may be met by primary coverage or combination of primary and umbrella/excess.

Professional Liability (If Applicable):

Per Claim and in the Aggregate: **Limit per applicable Contract or Agreement**

All professional services firms must provide professional liability insurance appropriate for their profession. Architectural and engineering firms must provide coverage for liability arising out of design errors and omissions. Retro Date will be prior to commencement of work. **The policies shall provide a five (5) year extended reporting period or alternatively be renewed with the same retro date for such time period.**

Contractor's Equipment

The Contractor is responsible for their tools and equipment including, but not limited to, construction trailers and their contents and temporary scaffolding at the project site, whether owned, leased, rented or borrowed. Contractor acknowledges and agrees that the Sponsor will not be responsible for any loss or damage to their tools and equipment. If insured, the Contractor's insurance policies covering tools and equipment will include a waiver of subrogation and any other rights of recovery in favor of the Sponsor, designer, engineer and all enrolled contractors. If uninsured, the Contractor will hold harmless the Sponsor, designer, engineer and all other contractors for loss or damage to their tools and equipment.

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Certificates of Insurance

All Contractors shall maintain the required insurance, without interruption, from the date of commencement of work throughout the warranty period. All Contractors shall provide the Construction Manager and OCIP Administrator with Certificates of Insurance evidencing the coverages, limits, and amendments to the policies prior to commencement of work on the Project Site. Coverage must be with an authorized insurance carrier having an A-, X rating or higher from A.M. Best. The Sponsor reserves the right to request copies of policies or specific endorsements. Failure of any Contractor or other party to provide such Certificates of Insurance will not be relief from the responsibility to carry and maintain such insurance.

The Certificate of Insurance must indicate the following as a certificate holder:

Willis of Minnesota, OCIP Administrator
1600 Utica Avenue South
Minneapolis, MN 55416

The Certificate of Insurance must include the following additional insured language:

Project: MMPS – General Liability Insurance shall apply to locations away from the Project Site as defined. All of the following parties are an additional insured per ISO CGL 2010 07/04 and ISO CGL 2037 07/04, or their equivalents, with respects to General Liability, Auto Liability, Umbrella/Excess policies, and Pollution (if applicable): All policies include a waiver of subrogation in favor of all parties listed as additional insured.

- *M. A. Mortenson Company*
- *Minnesota Sports Facilities Authority*
- *Minnesota Vikings Football, LLC*
Minnesota Vikings Football Stadium, LLC
- *Hammes Company Sports Development, Inc.*
- *ICON Venue Group, LLC*
- *HKS, Inc.*
- *Lenders*
- *Others as required by contract*
- *All affiliated parties and each of the foregoing Persons' elected officials, appointed officials, board members, directors, officers, shareholders, affiliates, subsidiaries, parent companies, members, owners, agents, representatives, legal counsel, and employees, together with the constituent partners, members, owners, shareholders, and heirs and estates of each of the foregoing, and the City and State*

A sample certificate is included in the Forms Section of this Manual.

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Notice of Cancellation

Policies shall be endorsed to provide notice of cancellation or non-renewal to Owner or Sponsor by contractor's insurance agent/broker, or carrier, or if unavailable, Contractor must provide Sponsor with thirty (30) days advance written notice of cancellation or non-renewal (ten (10) days in the event of cancellation for non-payment of premium). Contractor must notify the Owner or the OCIP Administrator of any material change or reduction in coverage to the Contractor's insurance policies.

Survival

The insurance requirements described in the OCIP Manual are not intended to, and shall not in any way, limit or quantify the liabilities and obligations each Contractor assumes pursuant to its contract. The insurance requirements are an independent contract provision and shall survive the termination or expiration of this contract or any subcontract.

No Release

The Sponsor's procurement and provision of the OCIP shall in no way relieve the Contractor of any responsibility or liability under its contract, any applicable law, statute, regulation or order, except the responsibility of securing the OCIP coverages if, and commencing when, the Contractor becomes an Enrolled Contractor.

NOTE: While the OCIP is intended to provide uniform coverages and reasonable limits, the OCIP is not intended to meet all the insurance needs of the Enrolled Contractors. Contractor shall discuss the OCIP with its insurance agent or consultant to assure that proper coverages are maintained. Contractor shall notify its agent that the work performed on-site will be insured under the OCIP. The intent of this notification is to inform the Contractor's standard program underwriters that the insurance coverages provided under the OCIP are primary on the project site.

ENROLLMENT/REPORTING PROCEDURES & CONTRACTORS' RESPONSIBILITIES

ENROLLMENT/REPORTING PROCEDURES:

WHAT FORMS & REPORTS ARE REQUIRED?

Enrollment in the OCIP is mandatory at the discretion of the Owner, but ENROLLMENT IS NOT AUTOMATIC. Access to the project site will not be granted until enrollment is completed. Un-enrolled or excluded contractor(s) and / or subcontractor(s) do not have any insurance coverage under the OCIP.

Complete the following forms within the time frames specified below:

- Notice of Subcontract Award and Request for Insurance – when work is awarded to Contractor or when Contractor awards work to subcontractors of all tiers.
- OCIP Enrollment Form – Prior to starting work onsite and for change orders (when applicable) to identify cost of additional contract(s), change order(s), Time & Material contracts or as determined by the Sponsor.
- Payroll/Receipts Reporting Form – **Monthly - due by the 10th of the month for payroll through end of last pay period for prior month.**
- Notice of Completion – Upon completion.

Failure to provide the required enrollment documents and/or other reporting forms may cause delayed progress payments.

HOW DO I COMPLETE THE FORMS & SUBMIT REPORTS?

NOTICE OF SUBCONTRACT AWARD FORM:

- When an Enrolled Contractor awards a subcontract, the awarding Contractor shall complete the Notice of Subcontract Award for each subcontractor and immediately forward it to the OCIP Administrator.
- The awarding Contractor shall ensure that their subcontractors complete the Enrollment Form and immediately forward it to the OCIP Administrator

Minnesota Multipurpose Stadium Project

OCIP ENROLLMENT FORM:

- Each Eligible Contractor working at the Project Site shall complete the Enrollment Form. Contractors shall contact their insurance agent for assistance in completing the Enrollment Form.
- Contractors' calculations shall be based upon rates in force at the time of the contract bid and are not subject to change during the contract period. The insurance deduction will be based upon the amount approved by the OCIP Administrator and Sponsor.
- Credits, assessments or surcharges shown on the declarations and/or rating schedules from the policies will be used to verify Contractors' insurance costs. Any Contractor's whose policies are written on a large deductible basis and/or those utilizing corporate allocations, should contact the OCIP Administrator for additional instructions. Contractors shall cooperate in providing all documentation necessary to verify their insurance costs.
- Contractors shall accurately estimate all Project Site payroll, without burden or fringes, by class code (exclude premium overtime).
- Identify subcontractor's cost or take **1%** of estimated subcontracted amount to hold until all subcontractors are enrolled. This can be adjusted at the time subcontractors are enrolled if estimated subcontractor's costs exceed original **1%** estimate, or adjustments can be made at closeout.
- If a Contractor is awarded more than one contract on the project, the Contractor is required to complete a separate Enrollment Form for each contract.
- Each Enrolled Contractor further agrees that the Sponsor is entitled to, and may collect, from time to time through subsequent change orders, additional insurance deductions which are in excess of those initially identified by the enrolled parties in the initial deductive change order. Such additional deductions may result from any scope changes, additional work, inaccurate assumptions in the initial deduction (i.e. increased payroll) or from information discovered during any audits which justify the taking of additional insurance credits. If the final actual insurance credit, plus change orders for interim adjustments, is less than estimated, then an additive change order will be processed to return those over-estimates to the enrolled contractor.
- Contractor must provide an Excess Liability credit, even if policy is "flat rated" policy. If one is not provided, contractor will be charged a minimum of 25% of the General Liability credit calculated.
- Any profit and overhead mark-up on insurance will be included as part of each Contractor's overall insurance deduction credit.

Minnesota Multipurpose Stadium Project

General Liability and Excess / Umbrella Liability declaration pages and rating schedules from Contractor policies shall be provided along with the Enrollment Form. Contractors shall also provide Certificate(s) of Insurance as required in Section 5 of the OCIP Manual. In the case of Contractor(s) with policies with large deductible and/or those utilizing corporate allocations they must also provide five (5) years of loss history and five (5) years of audited payroll by annual total.

If a Contractor does not furnish the required documentation within **10** calendar days of receiving a Notice to Proceed, the Sponsor will have the right to charge a minimum of **\$10.00** per \$1,000 in receipts for General Liability. These assigned rates will be used for the closeout and / or final calculation of the insurance costs under the contract.

Noncompliance Charge

Any Contractor who fails to enroll any of its Eligible Contractors of any tier will be subject to a minimum **charge** of **1%** of the subcontract amount. Collection of the insurance deduction of any non-enrolled contractor(s) of any tier does not provide automatic enrollment in the program.

CHANGE ORDERS

- If the change order amount exceeds \$250,000 an Enrollment Form must be completed and submitted to the OCIP Administrator. An interim adjustment to the contract may be made to remove the insurance costs associated with the change order.
- A copy of the executed Change Order Proposal and the completed Enrollment Form must be submitted to the OCIP Administrator within **15** working days of receipt of an approved Change Order.

PAYROLL AND RECEIPTS REPORTING FORM

Every Enrolled Contractor shall submit a completed Payroll and Receipt Reporting Form to the OCIP Administrator for payroll, labor-hours and receipts associated with work performed at the Project Site.

- Contractors must use OCIP-approved forms unless authorized in writing by the OCIP Administrator to use their own form(s).
- Payroll and receipts for the value of work in place must be submitted separately for each contract awarded for work at the Project Site.
- If no work is performed at the Project Site during the required reporting period, a report must be submitted showing "Zero Payroll/Receipts".
- If applicable, payments made to subcontractors shall also be identified separately.

Minnesota Multipurpose Stadium Project

- Use of Class Code 8810 shall apply **ONLY** to clerical employees who remain in the trailer and/or office located at the Project Site. Use of Class Code 5606 shall apply **ONLY** to individuals at the Project Site who supervise through a foreman or superintendent.
- **ALL ENROLLED CONTRACTORS MUST MAKE THEIR APPLICABLE PAYROLL RECORDS AVAILABLE UPON REQUEST OF THE OCIP INSURANCE COMPANY.**
- **FAILURE TO PROMPTLY PROVIDE REQUIRED APPLICABLE PAYROLL REPORTS MAY RESULT IN DELAY OF CONTRACTORS' PROGRESS PAYMENTS UNDER THE CONTRACT**

CLOSEOUT PROCESS

- An Enrolled Contractor can make a Request for Final Payment when it has completed its Work at the Project Site and no longer has on-site Workers. The Notice of Contract Completion Form shall be completed by the contractor and submitted to the OCIP Administrator
- A final audit will be conducted of the applicable final Project Site payroll, receipts and insurance costs. The insurance costs will be based upon the rates, credits and surcharges shown on the approved Enrollment Form. These rates will be applied to the total project payroll and/or receipts. The final adjustment will be calculated based upon the total payroll or receipts less those estimated during the bidding and any change orders.
- In the event that the Notice of Contract Completion Form is not provided to the OCIP Administrator in a timely manner, the final insurance cost will be calculated by utilizing a percentage based on the information (i.e. rates, payroll, receipts, etc.) shown on the approved Enrollment Form, payroll reports received, and final receipts received from awarding contractor.
- The OCIP Administrator will provide the Contractors with close-out forms and notify the Sponsor and/or awarding Contractor of the final calculation. Any difference will be adjusted in the contract amount prior to release of retainage. **FINAL ADJUSTMENT TO DEDUCT WILL BE MADE BASED ON FINAL TOTAL PAYROLL AND/OR RECEIPTS.**

Minnesota Multipurpose Stadium Project

CONTRACTORS' RESPONSIBILITIES:

All Contractors are required to reasonably cooperate with the Sponsor, the OCIP Administrator, and the OCIP insurance carrier(s) in all aspects of the OCIP operation and administration. Contractors' responsibilities include:

- Including OCIP contract provisions and requirements in all subcontracts;
- Incorporating the OCIP Manual by reference into the successful bidders' awarding Contract;
- Each subcontractor shall be provided a copy of the OCIP Manual and any Project Safety Manuals, which shall include applicable Return to Work guidelines. All contractors shall perform the work in a safe manner, shall comply with all safety measures outlined in applicable project safety manuals or otherwise in the Contract Documents, and shall comply with all applicable laws, codes, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including such provisions as are more strict or more expensive than the safety measures required in the applicable project safety manuals.;
- Enforcing enrollment of all subcontractors, except for those identified as Excluded Contractors, as participation by eligible subcontractors is mandatory.
- Notifying the OCIP Administrator of all subcontracts awarded by completing the Notice of Subcontract Award Form;
- Assisting in timely securing the required enrollment and/or payroll/premium information from their subcontractors;
- Complying with insurance requirements and **Section 7, Insurance Safety and Claims Procedures;**
- Attending all meetings regarding OCIP administration, claims or safety issues, as required;
- Maintaining and reporting payroll, receipts, labor-hours, or payments made to subcontractors as required by the OCIP;
- Assuring that all Subcontractor(s) of all tiers are enrolled. Failure of enrolled contractors to enforce enrollment to Sub-tier contractors does not relieve the enrolled contractor of the financial responsibility for their insurance deductions. Sponsor reserves the right to pursue deductions for all Subcontractor(s) of any tier through the first tier Contractor(s). Note: Collection of the insurance deduction of any non-enrolled contractor(s) of any tier does not provide automatic enrollment in the program.

Minnesota Multipurpose Stadium Project

Any fines assessed by a governmental entity as the result of late enrollment will be assessed against the responsible enrolled contractor.

- Unless otherwise directed by the Sponsor, all Contractors not enrolled in the OCIP will be required to participate in the Sponsor's Project Safety Program and maintain their own insurance coverage of the types and with limits set forth in Section 5.
- Complying with all rules and regulations of the applicable State Insurance Department/Bureau. Failure to comply with state requirements may result in fines being assessed. Contractors shall reimburse the Sponsor, or the Sponsor shall deduct from funds due, or to become due, to the Contractors, for any fines assessed against the Sponsor for Contractors' noncompliance.
- Assignment of Return Premiums: The Sponsor shall be responsible for payment of all premiums associated with the OCIP and will be the sole recipient of any dividend(s), rebate(s), and/or return premium(s) generated by the OCIP.
- In consideration of Sponsor's provision of OCIP coverage, each Enrolled Contractor agrees to:
 - Identify all applicable insurance costs associated with their work at the Project Site for coverages provided under the OCIP and cooperate with the OCIP Administrator to verify the insurance cost;

Any and all returns of premiums, dividends, discounts or other adjustments to any OCIP policy is assigned, transferred and set over absolutely to Sponsor. This assignment is valid for insurance policies whose premiums have been paid by the Sponsor on behalf of such Contractors.

Minnesota Multipurpose Stadium Project

SECTION 7

CLAIM REPORTING

All General Liability and Builder's Risk accidents occurring on the Project Site - including incidents, accidents, and unusual circumstances which have the potential to develop into claims against OCIP policies - must be reported as outlined below by Enrolled Contractors as soon as possible but, in no event, later than the close of business on the date of the occurrence.

Following any accident or incident, basic scene investigation should be undertaken by the involved Contractor's safety representative in conjunction with Construction Manager Safety personnel to establish the facts of the accident and to assist the OCIP carrier's claims adjuster.

- Investigate and document what happened.
- Take photographs and/or measurements, as applicable.
- Identify all involved parties, including witnesses, and obtain contact information.
- Record date(s), time(s) and weather conditions.
- Preserve and protect physical evidence.
- Maintain complete confidentiality.
- Complete the appropriate claim reporting forms.
- Cooperate fully with the OCIP carrier's adjuster.

Minnesota Multipurpose Stadium Project

GENERAL LIABILITY CLAIMS

Any incident involving injury or damage to the general public or off-site property is considered a General Liability loss and must be reported directly to the Construction Manager, MSFA and Willis as soon as possible.

Therefore, in the event of such an incident, immediately contact **Ryan Kane**. In the event that he cannot be reached, please contact **Marty Berger**. In the event that neither individual can be reached, please contact **Mary Fox-Stroman**.

Ryan Kane Risk Manager – Mortenson	Phone: 763-287-5126 Cell: 612-812-3900 Email: ryan.kane@mortenson.com
--	---

Marty Berger Claim Consultant – Willis	Phone: 763-302-7154 Cell: 612-812-9474 Email: marty.berger@willis.com
--	---

Mary Fox-Stroman Director of Finance - MSFA	Phone: 612-335-3311 Cell: 763-300-3369 Email: mary.fox-stroman@msfa.com
---	---

BUILDERS RISK CLAIMS

Any incident involving injury or damage to the project site is considered a Builders Risk loss and must be reported directly to the Construction Manager, MSFA, and Willis as soon as possible.

Therefore, in the event of such an incident, immediately contact **Ryan Kane**. In the event that he cannot be reached, please contact **Marty Berger**. In the event that neither individual can be reached, please contact **Mary Fox-Stroman**.

Ryan Kane Risk Manager – Mortenson	Phone: 763-287-5126 Cell: 612-812-3900 Email: ryan.kane@mortenson.com
--	---

Marty Berger Claim Consultant – Willis	Phone: 763-302-7154 Cell: 612-812-9474 Email: marty.berger@willis.com
--	---

Mary Fox-Stroman Director of Finance - MSFA	Phone: 612-335-3311 Cell: 763-300-3369 Email: mary.fox-stroman@msfa.com
---	---

Minnesota Multipurpose Stadium Project

PROCEDURES FOR RECORDING AND REPORTING AN INCIDENT

- Secure the scene of the incident. Except in the case of emergency, do not allow persons or objects to leave or be removed from the scene. If a camera is available, obtain photographs of the scene. Do not admit or comment on liability. Explain that a representative from **Hartford Insurance Company** will be contacting them (if needed).
- An incident investigation report will be completed by a designated Mortenson representative, with the assistance of appropriate involved Contractor personnel.
- Medical treatment is at the option of the allegedly injured third party.
- All employees involved in the incident must be taken to the medical facility for a drug and alcohol screen.
- No statements shall be made to the media. Direct all media requests for comments or information to the owner.

CATASTROPHIC / TRAUMATIC INJURIES / INCIDENTS

- In the event a catastrophic or traumatic injury or incident occurs, involving a project employee or a third-party, 911 should be called immediately. Immediately after calling 911, immediately contact **Krista Twesme**. In the event that she cannot be reached, please contact **Ryan Kane**. In the event that neither individual can be reached, please contact **Dale Dhooge**.

Krista Twesme
Vice President,
Risk Management – Mortenson

Phone: 763-287-5705
Cell: 651.328.7724
Email: krista.twesme@mortenson.com

Ryan Kane
Risk Manager – Mortenson

Phone: 763-287-5126
Cell: 612-812-3900
Email: ryan.kane@mortenson.com

Marty Berger
Claim Advocate – Willis

Phone: 763-302-7154
Cell: 612-812-9474
Email: marty.berger@willis.com

Minnesota Multipurpose Stadium Project

DO NOT MAKE STATEMENTS TO THE MEDIA. Refer all inquiries to your operating group leader or corporate communications. Under no circumstance should anyone other than the designated spokesperson speak to the media regarding an incident or crisis without authorization from the operating group leader or senior vice president.

- The employee's supervisor should then follow standard protocol for reporting a Workers' compensation claim.
- It will be the responsibility of the employee's supervisor to coordinate with the trauma facility to assure the appropriate Drug and Alcohol Screen is performed.
- **REFER ALL MEDIA QUESTIONS TO:**

JENN HATHAWAY

Minnesota Sports Facilities Authority
900 South 5th Street
Minneapolis, MN 55415
office: 612-335-3308
cell: 612-816-1710
email: jenn.hathaway@msfa.com

SECTION 8

OCIP FORMS

- ACORD – Certificate of Insurance
- Cost Identification Worksheet
- Payroll Reporting Form
- Notice of Completion Form
- Notice of Subcontract Award and Request for Insurance Form
- OCIP Claim Reporting Form – Reasonable Cause Report Form



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement (s).

PRODUCER SMITH & JONES INSURANCE AGENCY 1000 Main Street Minneapolis, MN 55402	CONTACT NAME: John Smith	
	PHONE (A/C No. Ext): 555-555-5555	FAX (A/C No): 555-555-5555
	E-MAIL ADDRESS: John.Smith@smithandjones.com	
	PRODUCER CUSTOMER ID #:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
INSURED ABLE CONSTRUCTION COMPANY 700 Meadow Lane North Minneapolis, MN 55422	INSURER A: A. M. Best Rating of 'A-' or better	
	INSURER B: A. M. Best Rating of 'A-' or better	
	INSURER C: A. M. Best Rating of 'A-' or better	
	INSURER D: A. M. Best Rating of 'A-' or better	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATE. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YY)	POLICY EXP (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR. <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y	Y	ABC 123 456	05/01/13	05/01/14	EACH OCCURRENCE	\$ per Agreement
							DAMAGE TO RENTED PREMISES (ea occurrence)	
							MED EXP (Any one person)	
							PERSONAL & ADV INJURY	\$ per Agreement
							GENERAL AGGREGATE	\$ per Agreement
							PRODUCTS-COMP/OP AGG	\$per Agreement
							Med. Expense (any one person)	\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____	Y	Y	XYZ 987 654	05/01/13	05/01/14	COMBINED SINGLE LIMIT (Ea accident)	\$ 2,000,000
							Bodily Injury (Per person)	\$
							Bodily Injury (Per accident)	\$
							Property Damage (Per accident)	\$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	Y	Y	UL 999 000	05/01/13	05/01/14	EACH OCCURRENCE	\$ as needed to meet limits per Agreement
							AGGREGATE	\$
D	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONSS below		Y	WC EL 5566777	05/01/13	05/01/14	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE-EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE-POLICY LIMIT	\$ 1,000,000
C	Other PROFESSIONAL E & O		Y	EO367529	05/01/13	05/01/14	if applicable per Agreement	
C	POLLUTION LIABILITY including mold	Y	Y	EO367555	05/01/13	05/01/14	if applicable per Agreement	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

MAM #: 13125002 PROJECT: Minnesota Mult-Purpose Stadium

As respects the "named insured" subcontractor's operations on this project, all contractually required parties (see attached list) are included as Additional Insureds under the General Liability, Automobile Liability and Umbrella Liability and Pollution Liability (if applicable) policies. Additional insureds have been named on the General Liability policy per the attached endorsements. All policies include a waiver of subrogation in favor of all parties listed as additional insured. **[IF ENROLLED IN THE OCIP, ADD THE FOLLOWING STATEMENT]** General Liability insurance shall apply to locations away from the Project Site as defined by the Owner Controlled General Liability policy.

CERTIFICATE HOLDER

Willis of Minnesota
 OCIP Administrator
 1600 Utica Avenue South, Suite 600
 Minneapolis, MN 55416

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

- Initial Enrollment
- Additional Contract
- Change Order
- Time & Material Contract
- Short Term and/or Small Contract

MINNESOTA MULTI-PURPOSE STADIUM PROJECT COST IDENTIFICATION WORKSHEET

CONTRACTOR INFORMATION

Contractor Legal Name: _____ Indiv: Partnership: Corp: J/V:
 Legal Address: _____ TIN#: _____ Unemp Ins Reg #: _____
 Site Contact: _____ Site Address: _____
 Phone: () - - Cell: () - - Fax: () - - Email: _____
 Office Contact: _____ Phone: () - - Fax: () - - Email: _____
 Insurance Contact: _____ Phone: () - - Fax: () - - Email: _____
 Payroll Contact: _____ Phone: () - - Fax: () - - Email: _____
 Address (if different) _____
 Minority Participation: DBE MBE WBE Other _____
 Are you using a Leasing Company? YES NO If yes Leasing Company Name: _____
 Are you a Leasing Company? YES NO

CONTRACT INFORMATION

Type of Work: _____ Contract #: _____ Contract Value: \$ _____
 Project Description: _____ Off-site Work within scope of contract: YES NO
 Awarding Contractor: _____ Prime Contractor: _____
 Award Date: _____ Est. Start Date: _____ Est. Completion Date: _____ Self Performed: _____ % \$ _____
 Subcontracted _____ %; \$ _____ Est. # of Subcontractors: _____ Est. Sub Work Hours: _____

CURRENT INSURANCE INFORMATION

Agent/Broker Company Name: _____ Contact Name: _____
 Phone: () - - Fax: () - - Email: _____

It is each Contractor's responsibility to notify its own insurance carrier to exclude all work to be done under this contract from your current insurance program.

GENERAL LIABILITY

Contractor Name: _____
 Current GL Ins. Co: _____ Policy Period: _____
 Current GL rate is based on: payroll or receipts per \$100 \$1,000 or Per Employee or Per Unit or Flat Premium
 If GL basis is other please describe: _____
 Deductible: _____ Retention: _____

A. General Liability (Project Site Payroll/Receipts Only)

Attach additional pages if required – Attach copy of Declaration page and Rating Sheets for GL Policy

G.L. Classification	G.L. Code	G.L. Rate (per basis shown above)	Estimated Payroll*/Receipts	Premium
1.			\$	\$
2.			\$	\$
3.			\$	\$
4.			\$	\$
5. Subcontracted Work			\$	\$

* It is extremely important to accurately estimate payrolls anticipated for this contract. Payroll should be raw wages without burden or fringes, but should include sick, vacation, holiday pay and overtime wages and imputed income.

Total General Liability Premium A. \$

B. UMBRELLA EXCESS

B. Umbrella Excess: Rate: \$ _____ Per \$100 \$1,000 payroll or receipts or Flat Rate
 Name of Insurer: _____ Term: _____ Per Unit _____
 Attach a copy of declaration page and rating sheets for Umbrella/Excess policy. (If Flat Rate and nothing offered, – charge will be made at 25% of the GL premium calculated in A above.)

B. \$

C. SUBCONTRACTOR PREMIUMS

C. Estimated lower tier Subcontractors Premiums (Attach Notice of Contract Award or Enrollment for Each Subcontractor). See Contract and/or Insurance Manual.

C. \$

D. OVERHEAD & PROFIT - _____ % of the Sum of Items A, B and C above. Identify the percentage included from your bid

D. \$

E. TOTAL PREMIUMS

E. TOTAL PREMIUMS (A+B+C+D)
 "Total Premiums" indicated in F represent the amount of insurance premium the Contractor has identified in the bid proposal.

E. \$

It is each Contractor's responsibility to notify its own insurance carrier to exclude all work to be done under this contract from your current insurance program.

AGREEMENT

The Sponsor, or their Agent, is granted permission by Contractors to inspect the insurance and payroll records used in determining the above credit. The Sponsor will deduct the above amount from Contractors' bid by change order. At completion of the Work, Sponsor's Agent shall audit the project payroll records of Contractors and adjust Contract amount for final audited insurance premiums in accordance with the insurance premium audit provisions of the insurance policy. Any and all returns of premiums, dividends, discounts or other adjustments to any OCIP policy is assigned, transferred and set over absolutely to Sponsor. This assignment is valid for insurance policies whose premiums have been paid by the Sponsor on behalf of such Contractors.

This agreement shall be effective when signed below or in counterpart, and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.

Signed: _____ Title: _____ Date: _____

Send this Form to:

Willis of Minnesota
Attention: Denise Wishcop
1600 Utica Avenue South, Suite 600
Minneapolis, MN 55416

Phone : 763-302-7101
Email: denise.wishcop@willis.com
Fax: 763.302.7200

MINNESOTA MULTI-PURPOSE STADIUM PROJECT PAYROLL/RECEIPTS REPORTING FORM

Contractor Name: _____
 Address: _____ City: _____ State: _____ Zip: _____
 Phone: _____ Fax: _____
 Awarding Contractor: _____ Prime Contractor: _____

Please indicate Project Site payroll and submit by the 10th of each month. Please retain a copy for your files.

If this is your first payroll report, when did you start on site? _____
 Is this is your final payroll report for this contract? YES NO

LOCATION CODE (For this Contract): _____ PAYROLL PERIOD: _____

GENERAL LIABILITY			
GL Classification Description	Work Hours / Payroll	GL Code	Receipts / Other
1.			
2.			
3.			
4.			
5.			
6. Subcontracted Work		95185	
Total			
Monthly Receipts (Amount on Monthly Pay Application)			\$

PAYROLL REPORTING* (ON SITE PAYROLL ONLY)			
Description of Labor	Work Hours / Payroll	WC Code	Payroll
1.			
2.			
3.			
4.			
5.			
6.			
7.			
Total			\$

**Payroll reporting is required for the Owner Provided General Liability Policy. Rating basis is WC Payroll. Workers' Compensation is not provided under the OCIP.*

- It is extremely important to accurately estimate payrolls anticipated for this contract. Payroll should be raw wages without burden or fringes: but should include sick, vacation, holiday pay, overtime wages and imputed income.
- Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week or on Saturdays, Sundays, or holidays, when there is an increase in the hourly rate to work such hours. Hours should be shown on overtime.

The above is a true and complete statement of the entire remuneration of services rendered by employees of the company shown above.

Signature: _____

Title: _____ Date _____

E-Mail: _____

Send this Form to: Willis of Minnesota
 Attention: Denise Wishcop
 1600 Utica Avenue South, Suite 600
 Minneapolis, MN 55416

Phone : 763-302-7101
 Email: denise.wishcop@willis.com
 Fax: 763.302.7200

**MINNESOTA MULTI-PURPOSE STADIUM PROJECT
NOTICE OF SUBCONTRACT AWARD
AND
REQUEST FOR INSURANCE**

**This is to inform you that we have awarded the following subcontract to the following
Subcontractors:**

Name of Firm: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: () - _____ Fax: () - _____ TIN #: _____
Office Contact: _____ Email: _____
Safety Contact: _____ Email: _____
Type of Work: _____ Contract #: _____
Award Date: _____ Est. Start Date: _____ Est. Completion Date: _____
Contract Value: \$ _____ Est. Payroll: \$ _____ Est. Work Hours: _____
Est. # of Subcontractors: _____

Awarding Contractor(s): _____
By: _____
Title: _____ Date: _____
Prime Contractors (if different): _____

DO NOT complete this form for your company.

Award Date – date Notice to proceed was given (Verbally or in Writing)

You must complete a Notice of Subcontract Award, on each of your subcontractors.

Send this Form to:

Willis of Minnesota
Attention: Denise Wishcop
1600 Utica Avenue South, Suite 600
Minneapolis, MN 55416

Phone : 763-302-7101
Email: denise.wishcop@willis.com
Fax: 763.302.7200

**MINNESOTA MULTI-PURPOSE STADIUM PROJECT
NOTICE OF CONTRACT COMPLETION FORM
(to be submitted with final pay request)**

Please be advised, we, _____ are scheduled to complete our work for:
 Awarding Contractor: _____ Prime Contractor: _____
 Project Description: _____ Actual Start Date: _____ Completion Date: _____
 Reported Contract Value: _____ Final Contract Value: _____
 Self Performed Work: _____ Subcontracted Work: _____
 Estimated WC On-site Payroll: _____ Final WC on-site Payroll: _____

All Contract Values should include all insurance cost.

We used the following enrolled subcontractors who will also complete their work on the date shown above:

<u>Subcontractors</u>	<u>Reported Contract Value</u>	<u>Contract Value</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

This is our only contract YES NO

We are still working on the following contracts:

<u>Location Code</u>	<u>Awarding Contractor</u>	<u>Prime Contractor</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Your Company's Name: _____ Date: _____

By: _____ Title: _____

Final insurance audits may be made under the applicable policies. Please show who in your office (or another location if applicable) is responsible for this information:

Name: _____ Phone: _____
 Address: _____ Fax: _____
 City, State Zip: _____ Email: _____

Send this Form to: Willis of Minnesota
 Attention: Denise Wishcop
 1600 Utica Avenue South, Suite 600
 Minneapolis, MN 55416

Phone : 763-302-7101
 Email: denise.wishcop@willis.com
 Fax: 763.302.7200

FORM - OCIP ACCIDENT / INCIDENT REPORT

PROJECT NAME/DESCRIPTION: _____ PROJECT/CONTRACT # _____

CONTRACTORS NAME: _____

<u>NAME OF PERSON REPORTING</u>	<u>PHONE#</u>	<u>FAX#</u>	<u>EMAIL</u>
_____	_____	_____	_____

ACCIDENT / INCIDENT INFORMATION

DATE OF ACCIDENT / INCIDENT: _____ TIME OF ACCIDENT / INCIDENT: _____ AM PM DATE NOTIFIED: _____

ADDRESS OR LOCATION WHERE ACCIDENT / INCIDENT OCCURRED (BE SPECIFIC): _____

WERE THE POLICE CONTACTED? Yes No REPORT NUMBER _____

BRIEF DESCRIPTION OF ACCIDENT / INCIDENT (Use a separate sheet and diagram if necessary) _____

CLAIMANT INFORMATION

<u>CLAIMANT NAME</u>	<u>HOME PHONE#</u>	<u>WORK PHONE#</u>	<u>EMAIL</u>
_____	_____	_____	_____

ADDRESS _____ INJURED PARTY IS MALE FEMALE

INJURY INFORMATION

WERE ANY INJURIES INCURRED? Yes No IF INJURY OCCURRED, GIVE BRIEF DESCRIPTION: _____

WHAT INITIAL TREATMENT DID THE CLAIMANT RECEIVE? (FIRST AID, EMERGENCY, ETC) _____

WITNESS INFORMATION

<u>WITNESS NAME</u>	<u>HOME PHONE#</u>	<u>WORK PHONE#</u>	<u>EMAIL</u>
_____	_____	_____	_____

ADDRESS _____

<u>WITNESS NAME</u>	<u>HOME PHONE#</u>	<u>WORK PHONE#</u>	<u>EMAIL</u>
_____	_____	_____	_____

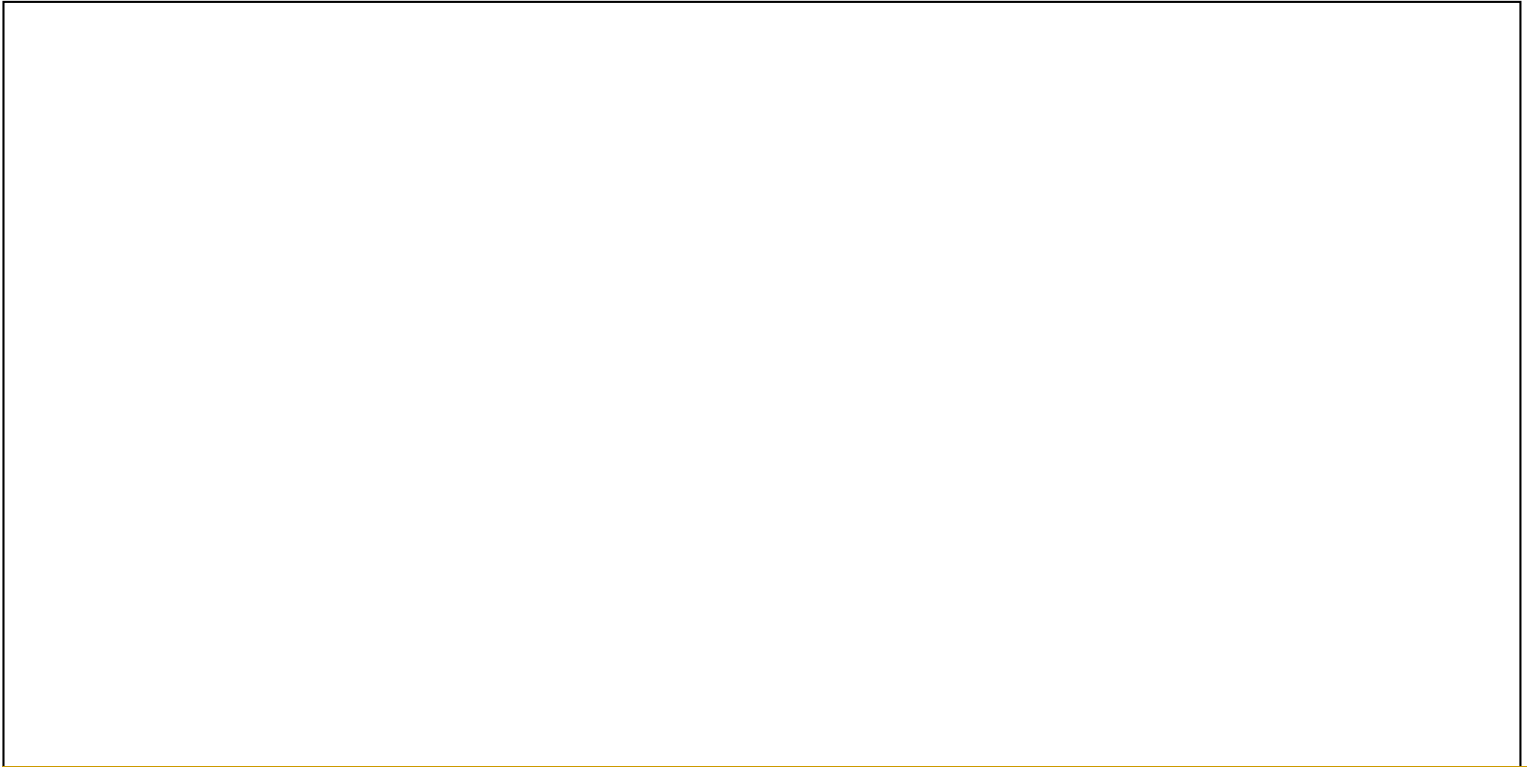
ADDRESS _____

<u>WITNESS NAME</u>	<u>HOME PHONE#</u>	<u>WORK PHONE#</u>	<u>EMAIL</u>
_____	_____	_____	_____

ADDRESS _____

ADDITIONAL COMMENTS

DIAGRAM (SHOW NORTH/SOUTH):



PERSON COMPLETING REPORT

NAME: _____ TITLE: _____ DATE: _____

SIGNATURE: _____

PROJECT MANAGER

NAME: _____ TITLE: _____ DATE: _____

ADDRESS

PHONE#

FAX#

EMAIL

SIGNATURE: _____

OCIP Manual Amendments

Edition Date: 12/10/2013

Amend Cell Phone for Ryan Kane

Amend Title for Marty Berger

Amend payroll description on page 16

Added Contact info for Media

Amend Notice of Subcontract Award to remove top Company Section

Updated Payroll / Revenue Reporting Form

Added "Send this form to" at the bottom of the forms

Amended Incident Reporting Form

Edition Date: 01/03/2014

Amend "B" to "A" in section B of Cost Identification Worksheet

Add Insurance Certificate Requirements on page 14 of Section 5

Update "Sample Certificate" to show Willis as the Certificate Holder for the OCIP

EXHIBIT 1
DESCRIPTION OF TRADE CONTRACTOR WORK

The following description is included in the scope of the Trade Contractor Work as **Exhibit 1**:

The design, work, services, labor, materials, and equipment to be provided by the Trade Contractor and its Subcontractors, Suppliers, Consultants and Subconsultants of any tier and associated with the Trade Contractor Work for the Project are described below, and it is the intention of the Trade Contract Agreement that the Trade Contractor shall provide all design, work, services, labor, materials, and equipment to complete the Trade Contractor Work in accordance with the Trade Contract Agreement, including the Trade Contract Documents and all Applicable Laws.

The Trade Contractor Work shall include the following, without limitation:

1. Design Services.

(a) Trade Contractor shall provide Design Services for the Trade Contractor Work in a manner consistent with the Standard of Care whether performed by the Trade Contractor, its Consultants or any Person engaged directly or indirectly by the Trade Contractor. All staff used by the Contractor in the performance of the Design Services under this Trade Contract Agreement shall be qualified by training and experience to perform their assigned tasks. Trade Contractor's Design Services shall include usual and customary structural, mechanical and electrical engineering services necessary to complete the Trade Contractor Work. Trade Contractor represents that it is: (i) knowledgeable of the Applicable Laws in connection with its scope of Design Services under this Trade Contract Agreement, including all health, safety, fire, environmental, building and zoning codes, rules and regulations, and agrees to comply with each of the foregoing; (ii) experienced and fully qualified to perform the Design Services under this Trade Contract Agreement; and (iii) properly licensed, certified, registered and organized to perform such Design Services under Applicable Laws or any similar requirements.

(b) During the Design Phase, Trade Contractor shall review the Authority's scope of work, budget and schedule and reach an understanding with the Authority of the Project requirements. Based on the approved Project requirements, Trade Contractor shall develop Design Development Documents within the Authority's budget. Upon the Authority's approval of the Design Development Documents, Trade Contractor shall prepare Construction Documents indicating requirements for construction of the Trade Contractor Work.

(d) As part of the consideration contained in the Trade Contract Amount, Trade Contractor and its Consultants and sub-Consultants unconditionally and irrevocably transfer and assign to the Authority all rights, title and interest of any kind or nature in and to their respective Design Documents. Trade Contractor and its Consultants and sub-Consultants acknowledge and agree that for copyright purposes any Design Documents produced or prepared by Trade Contractor and/or its Consultants or sub-Consultants in connection with this Trade Contract Agreement shall be considered works made for hire under Applicable Law, specially ordered or commissioned by the Authority. If, and to the extent that, such Design Documents are deemed not to be works made for hire by a court of competent jurisdiction or an arbitrator, then this Trade Contract Agreement shall constitute an irrevocable assignment and transfer to the Authority of the copyright in all such Design Documents, including the exclusive rights to reproduce, perform and distribute such Design Documents. The Authority shall have the sole right to bring enforcement actions for infringement of any and all such rights, and the Trade Contractor and its Consultants and sub-Consultants hereby assign any causes of action that may have accrued or will accrue with respect to in such documents, materials, trademarks, service marks and copyrights.

2. **Construction and Installation Services.**

[To be developed]

EXHIBIT 2
TRADE CONTRACT AMOUNT

[To be developed]

**EXHIBIT 3
EQUITY PLAN**

See attached Construction Services Agreement Equity Plan.



MINNESOTA MULTI-PURPOSE STADIUM CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN

Section 1. **Purpose / Outline – Overall**

- 1.1 Introduction. The State of Minnesota created the Minnesota Sports Facility Authority (“Authority”) to build a state-of-the-art multipurpose facility called the “People’s Stadium” (“Project”). The Authority is required by law to promote the involvement of women and members of minority communities in the construction of the Project, as more completely described in Minn. Stat. § 473J.12. The Authority hereby adopts this comprehensive Equity Plan for the construction phase of the Project. The purpose of this Equity Plan is to implement the Authority’s statutory mandate to promote employment of women and members of minority communities, create an employment program, hold a job fair, establish goals for construction contracts to be awarded to women-owned and minority-owned businesses, and establish workforce utilization goals.
- 1.2 The Team. Minnesota Vikings Football, LLC (the “Team”) fully supports this Equity Plan.
- 1.3 Affirmative Action / Non-Discrimination. Pursuant to Minn. Stat. § 473J.12, the Authority shall make every effort to employ, and cause the NFL team, the Construction Manager and other Subcontractors, vendors, and concessionaires to employ women and members of minority communities when hiring.
- 1.4 Employment Assistance Firm. Pursuant to Minn. Stat. § 473J.12, the Authority will issue a Request for Proposals for an employment assistance firm, preferably minority-owned, or owned by a disabled individual or a woman, to create an employment program to recruit, hire, and retain minorities for the Stadium facility. The Authority intends to supplement its statutory mandate and engage an employment assistance firm to identify, train, and facilitate the hiring and utilization of minorities, women, and veterans by the Construction Manager and its Subcontractors hired to construct the Project.
- 1.5 Job Fair. Pursuant to Minn. Stat. § 473J.12, the Authority shall hold a job fair and recruit and advertise at Minneapolis Urban League, Sabathani,



American Indian OIC, Youthbuild organizations, and other such organizations. To facilitate the Construction Manager's achievement of the Authority's workforce goals, the Authority may organize and host other similar fairs and events.

- 1.6 Stadium Equity Oversight Committee / Construction Manager Review Panel. The Authority recognizes that community involvement and support are crucial to a successful Project in general and this Equity Plan in particular. To foster and facilitate appropriate community involvement, the Authority will establish various committees, including the Stadium Equity Oversight Committee described in Section 3, and the Construction Manager Equity Review Panel described in Section 2.
- 1.7 Targeted Business. In Sections 4-11 of the Equity Plan, the Authority establishes a Targeted Business Program. The Targeted Business Program sets an 11% and 9% goal for construction contracts for the Project to be awarded to women- and minority-owned Minnesota-based business enterprises, respectively. The Targeted Business Program defines specifically how the goals may be met, the parameters of the Construction Manager's necessary and reasonable good faith efforts to meet the goals, the requirements for reporting and monitoring, the assistance the Authority will provide, and the consequences if the Construction Manager fails to meet the goals and fails to make good faith efforts to achieve the goals.
- 1.8 Veterans. In Section 21 of the Equity Plan, the Authority establishes a Veterans Inclusion Program. The Authority honors the service of our veterans and intends to supplement its statutory mandate by creating the Veterans Inclusion Program to ensure that our veterans have every opportunity to participate in the Project. The Veterans Inclusion Program will include efforts to include small veteran-owned businesses in the construction contracts to be awarded by the Construction Manager. The Veterans Inclusion Program will also include efforts to utilize veterans in the construction workforce.
- 1.9 Workforce. In Sections 12-18 of the Equity Plan, the Authority establishes a Workforce Program. The Workforce Program sets a 32% and 6% goal for workforce utilization for the Project of minorities and women, respectively. These goals were first established by the Minnesota Department of Human Rights. The City of Minneapolis then adopted these same goals. Achievement of these goals may be impacted by the nature of the Minnesota workforce, the number of individuals from



licensed trades needed for the Project, the number of other large construction projects that will compete for workers with the Project, and the availability issues these and other factors create. Despite the challenges, the Authority is committed to ensuring that the Construction Manager meets the goals or uses all necessary and reasonable good faith efforts to meet these goals. Furthermore, the Authority is confident that the level of participation the Project actually achieves and the training plan that will be implemented will leave a lasting legacy of a larger minority and woman construction workforce. The Workforce Program defines specifically how the goals may be met, the parameters of the Construction Manager's necessary and reasonable good faith efforts to meet the goals, the requirements for reporting and monitoring, the assistance the Authority will provide, and the consequences if the Construction Manager fails to meet the goals and fails to make good faith efforts to achieve the goals.

- 1.10 MSFA Staff. The Authority is committed to a successful Equity Plan and, to that end, the Authority has and will continue to make a significant investment in experienced staff to administer the Equity Plan. Among other things, the Authority has hired two "loaned executives" from the Metropolitan Council with deep experience on all of the issues that are part of this Equity Plan. These loaned executives will not only administer the Equity Plan, but they will also train other Authority staff to take over administration once the loaned executives' employment with the Authority ends.
- 1.11 Significant Investment. The Authority has and will continue to make significant investments in the success of the Equity Plan, including the loaned executive staff, other staff, and retention of an employment assistance firm to establish employment programs as described in Section 20.
- 1.12 Scope / Flowdown. As more specifically articulated in the Construction Services Agreement to be entered into between the Authority and the Construction Manager, this Equity Plan applies to the Construction Manager and the Construction Manager's Subcontractors and Suppliers of any tier.
- 1.13 Monitoring and Compliance. As more specifically described throughout the Equity Plan, the Authority has primary responsibility to monitor and audit the Construction Manager's compliance with the Targeted Business Program, the Workforce Program, and the Veterans Inclusion Program.



The Authority may, from time to time and in its sole discretion, request assistance from the City of Minneapolis, the Minnesota Department of Human Rights, and other appropriate agencies to assist the Authority in its efforts.

Section 2. **Construction Manager Equity Review Panel**

- 2.1 The Authority shall establish a “Construction Manager Equity Review Panel.” The Panel will, among other things, provide an advisory recommendation regarding potential Construction Managers’ experience and commitment to targeted business and workforce utilization goals.
- 2.2 The Authority shall appoint ten members at large to the Panel, including:
 - (a) Two representatives from the Authority;
 - (b) Two representatives from Minnesota Vikings Football, LLC;
 - (c) One representative from the City of Minneapolis;
 - (d) One representative from the Minnesota Department of Labor and Industry;
 - (e) One representative from the Minnesota women’s business community, such as, for example, the Association of Women Contractors;
 - (f) One representative from the Minnesota minority business community, such as, for example, the National Association of Minority Contractors;
 - (g) One representative from the Minnesota economic development community, such as Metropolitan Economic Development Association; and
 - (h) One representative from Minnesota organized labor, such as, for example, the Minneapolis Building and Construction Trades Council.
- 2.3 The Authority shall appoint one of the two Authority representatives to chair, administer, and attend each meeting of the Panel. The Authority



and its staff representatives are also responsible for facilitating communication to and from the Panel.

- 2.4 No member of the Panel may be an employee of a business or other organization that intends to solicit a contract or subcontract or otherwise be paid as part of the total cost of the work of the Project.
- 2.5 After the Authority receives proposals from potential construction managers, and after the Authority generates a “short list” of proposers, but before the Authority awards the Construction Services Agreement to a construction manager, the Panel shall request information from each short-listed Proposer and conduct an interview of each such Proposer lasting no longer than 60 minutes. The interview shall consist of a 30-minute presentation by the proposer with the remaining time to be devoted to questions by the Panel.
 - (a) Prior to the interview, the Panel will send an interview packet to each Proposer containing a request for information and a list of questions;
 - (b) The request for information shall ask the Proposer to include, at minimum, the following information:
 - (i) The Proposer’s experience and accomplishments on projects with targeted business and workforce utilization goals;
 - (ii) Resumes of the Proposer’s staff or contract organizations responsible for successful execution of the Equity Plan;
 - (iii) References from public agencies, minority and women business organizations, and community workforce agencies who can provide information regarding the Proposer’s past efforts on projects with targeted business and workforce utilization goals;
 - (iv) A detailed description of strategies for compliance with equity plans including without limitation detailed solicitation strategies that includes events, outreach activities, and innovative ideas to reduce barriers for minorities, women, and small minority- and women-owned



businesses and encourage, support, and obtain workforce participation by minorities and women on projects.

- 2.6 After all short-listed Proposers are interviewed, the Panel shall generate and submit a report to the Authority. The report shall contain, at minimum, a “Pass” or “Incomplete” designation. A “Pass” designation signifies the Panel recommends that the Proposer continue in the construction manager selection process. An “Incomplete” designation signifies that the Panel recommends the Proposer not continue to final negotiations unless and until the proposer addresses any noted deficiencies in the Panel’s report.
- 2.7 The Panel’s recommendation is advisory only. The Authority and Team retain complete and final discretion to award the Construction Services Agreement to the Construction Manager of its choice.

Section 3. Stadium Equity Oversight Committee

- 3.1 To ensure an accountable and transparent process, the Authority shall establish a “Stadium Equity Oversight Committee.” The Committee will, among other things, facilitate communication with the community regarding the Equity Plan and related issues associated with the Project.
- 3.2 The Committee shall hold periodic meetings, as determined to be appropriate by the Authority, for the lifetime of the construction of the Project, beginning in March of 2013. The meetings shall be open to the public.
- 3.3 The Authority shall appoint two permanent Authority representatives to chair, administer, and attend each meeting of the Committee. The Authority and its staff representatives are also responsible for facilitating communication to and from the Committee, including a report to the Authority following each such meeting.
- 3.4 The Authority shall specifically invite representatives of the following stakeholders to attend and participate in meetings of the Committee:
 - (a) Minnesota Vikings Football, LLC;
 - (b) The Employment Assistance Firm(s);
 - (c) The Construction Manager;



- (d) All members of the Construction Manager Equity Review Panel, as defined by Section 2;
- (e) City of Minneapolis Office of Civil Rights (Prevailing Wage);
- (f) Minnesota Department of Human Rights (Affirmative Action and Workforce Utilization Reporting);
- (g) Minnesota Department of Labor and Industry (Prevailing Wage and Apprenticeship);
- (h) Minnesota Department of Administration (Materials Management TGB Program);
- (i) City of St. Paul (CERT Program);
- (j) Minnesota Unified Certification Program (DBE); and
- (k) Military Action Group.

3.5 The Authority may specifically invite additional parties to attend and participate in meetings of the Committee in the Authority's sole discretion, but the Committee and its meetings will remain open to the public. Any member of the public may attend and participate in the Committee meetings.

3.6 A representative from the Construction Manager is required to attend each Committee meeting.

3.7 A representative from the employment assistance firm is required to attend each Committee meeting.

3.8 The primary purpose of the Committee is to facilitate communication with the community regarding the Equity Plan and related issues. Although the Committee may from time to time make recommendations to the Authority, the Authority retains the sole, complete, and final discretion on all Equity Plan decisions related to the Project.

Section 4. **Targeted Business Program**



- 4.1 The Authority recognizes the legislature’s mandate that the Authority establish and attempt to meet goals for construction contracts for the Project (the “Project”) to be awarded to women- and minority-owned business enterprises (“Targeted Businesses”) in a percentage at least equal to the minimum used for City of Minneapolis development projects. In furtherance of the intention of such mandate, the Authority also finds it appropriate to adopt this Targeted Business Program to establish participation goals for construction contracts entered into by the Authority’s Construction Manager and its various Subcontractors and Suppliers of all tiers.
- 4.2 The Authority establishes this Targeted Business Program based on, among other things, the study completed by National Economic Research Associates, Inc. for the City of Minneapolis captioned “The State of Minority- and Women-Owned Business Enterprise: Evidence from Minneapolis” dated October 21, 2010 (“Disparity Study”), and supplemental reports. The Authority adopts this Targeted Business Program for purposes of, among other things, ensuring a “level playing field” for WBE/MBE firms, fostering equal opportunity for WBE/MBE firms in contracts with the Authority, and reducing the relevant disparities identified in the Disparity Study.
- 4.3 The Authority hereby adopts the participation goals for work included in the Construction Services Agreement, based on the Disparity Study, and provided to the Authority by the City of Minneapolis. These goals are project- and contract-specific goals created by the City of Minneapolis Department of Civil Rights for the work included in the Construction Services Agreement. The City calculated these goals based on (a) the Disparity Study, (b) specific availability by scope of work for Targeted Businesses certified as more specifically described in Section 5.1, and (c) using the relative local disparity based on the total number of construction-related firms reported in the 2010 census. The goals are appropriate for the Construction Services Agreement because the Project is located in the City of Minneapolis. The goals, expressed as a percentage of the “Cost of the Work” as that term is defined by the Construction Services Agreement are as follows:
 - (a) 9% participation by MBE firms, as defined below, and
 - (b) 11% participation by WBE firms, as defined below.



(“Targeted Business Goal”).

- 4.4 The Authority will require the Construction Manager to make every necessary and reasonable good faith effort to achieve the goals set forth in Section 4.3.
- 4.5 The Authority adopts this Targeted Business Program to define more specifically how the goals may be met, the parameters of the Construction Manager’s necessary and reasonable good faith efforts to meet the goals, the requirements for reporting and monitoring, and the consequences if the Construction Manager fails to meet the goals and fails to make good faith efforts to achieve the goals.

Section 5. Definitions – Targeted Business. For purposes of the Targeted Business Program:

- 5.1 “MBE” means a Minnesota-based business that meets one or more of the following criteria:
 - (a) Certified by the Minnesota Uniform Certification Program (“MUCP”) as an MBE (as that term is used by MUCP) and found in the MUCP directory at: <http://mnucp.metc.state.mn.us/>;
 - (b) Certified by the Minnesota Department of Administration and classified as a Targeted Group (TG) business in the directory for the Minnesota Department of Administration Materials Management website at: <http://www.mmd.admin.state.mn.us/process/search/>. The business also must have one or more of the following designations used in the Department of Administration’s website: (A), (B), (H), (I), or (E). (The legend at the bottom of the directory page of the website provides this information.) Firms identified solely by a (D), (L), (M), (R), or (W) (which represent disabled-owned firms; firms in economically disadvantaged geographic areas; and woman-owned firms) do not meet the definition of an MBE;
 - (c) Certified by the Central Certification Program (CERT) as an MBE (as that term is used by CERT) and found in the CERT directory. The CERT directory will be made available by the Authority.



- 5.2 “WBE” means a Minnesota-based business that that meets one or more of the following criteria:
- (a) Certified by the Minnesota Uniform Certification Program (“MUCP”) as a WBE (as that term is used by MUCP) and found in the MUCP directory at: <http://mnucp.metc.state.mn.us/>;
 - (b) Certified by the Minnesota Department of Administration and classified as a Targeted Group (TG) business in the directory for the Minnesota Department of Administration Materials Management website at: <http://www.mmd.admin.state.mn.us/process/search/>. The business also must have the (W) designation used in the Department of Administration’s website, denoting a woman-owned business;
 - (c) Certified by the Central Certification Program (CERT) as an MBE (as that term is used by CERT) and found in the CERT directory. The CERT directory will be made available by the Authority.
- 5.3 “Targeted Business” means an MBE or WBE.
- 5.4 “Subcontractor” means any entity the Construction Manager contracts with for any part of the Project, including without limitation Sub-subcontractors and Suppliers of any tier to the Construction Manager.
- 5.5 “Subcontract” means any contract entered into by the Construction Manager or a Subcontractor for any part of the Project.
- 5.6 “Good Faith Efforts” means the necessary and reasonable efforts to meet the goals of this Targeted Business Program, including without limitation the good faith efforts described in this Targeted Business Program.

Section 6. Achievement of Participation Goals – Targeted Business

- 6.1 The Authority will require the Construction Manager to use Good Faith Efforts to achieve the Targeted Business Goals through the Subcontracts entered into between the Construction Manager and its Subcontractors, which in turn may enter into various agreements with lower-tier Subcontractors.
- 6.2 The Construction Manager is not required to meet the goals of this Targeted Business Program for each individual Subcontract it enters into.



Instead, subject to Section 7.3, the Construction Manager may meet, or make Good Faith Efforts to meet, the goals of this Targeted Business Program by aggregating participation from all of its Subcontractors. As part of its Good Faith Efforts, the Construction Manager may request participation at different levels from different Subcontractors.

- 6.3 The Construction Manager may count toward the Targeted Business Goal the value (or a percentage of the value, as discussed below) of the various Subcontractors' contracts for work performed on the Project only after the MBE or WBE is certified as such as described in Sections 5.1 and 5.2.
- 6.4 Whether the Construction Manager achieves the goals of this Targeted Business Program will be evaluated and determined as the Project progresses and at the end of the Project based on the total Cost of the Work as defined in the Construction Services Agreement. If the total dollar amount of MBE and WBE contracts meets or exceeds the established Targeted Business Goal, then the Authority will determine that the goals of this Targeted Business Program have been met.
- 6.5 The Authority will utilize the following guidelines, plus the guidelines in Appendix A, in determining the percentage of WBE/MBE participation that will be counted toward the Targeted Business Goal:
 - (a) The value of work performed by a firm after it has ceased to be certified as an MBE or WBE will not be counted toward the Targeted Business Goal.
 - (b) If an MBE or WBE's certification lapses, the value of work performed by a firm during any period of lapsed certification will not be counted toward the Targeted Business Goal.
 - (c) Only amounts paid to and performed by an MBE or WBE will be counted toward the Targeted Business Goal; participation of a Subcontractor will not be counted until the amount has been paid to the Subcontractor.

Section 7. Compliance Monitoring and Reporting – Targeted Business

- 7.1 The Authority intends to assist and monitor the Construction Manager's efforts to achieve the Targeted Business Goal during all phases of the Project, from pre-solicitation through construction. The Construction



Manager will cooperate with the Authority's monitoring plan and requests as outlined in this section.

7.2 Pre-Solicitation Phase – Authority. During the pre-solicitation phase (between the award of the Construction Services Agreement and the pre-bid meeting(s) for each Subcontract), the Authority will:

- (a) Participate with various governmental agencies, including without limitation the U.S. Small Business Administration and the State of Minnesota Materials Management Division, along with these agencies' outreach efforts and programs designed to assist MBEs and WBEs to become certified;
- (b) Work with non-profit business support organizations to develop strategies designed to reduce barriers for MBEs and WBEs and create effective communication activities;
- (c) Attend meetings and explain the Targeted Business Program to interested attendees;
- (d) Provide the Construction Manager and its Subcontractors of all tiers all appropriate resources and assistance to find WBE and MBE firms; and
- (e) Work with the Construction Manager to host, plan and operate small business "meet and greet" sessions intended to facilitate the introduction of small businesses, including WBE and MBE firms, to the Construction Manager and its Subcontractors of all tiers. The small business "meet and greet" sessions will be conducted no later than one month prior to respective bid due dates.

7.3 Pre-Solicitation Phase – Construction Manager. During the pre-solicitation phase (between the award of the Construction Services Agreement and the pre-bid meeting(s) for each Subcontract), the Construction Manager shall:

- (a) Provide one point of contact to the Authority for the pre-solicitation phase of the Project;
- (b) Comply with the Construction Manager's Targeted Business Enterprise Plan required by Section 10.8.1 of the Construction Services Agreement;



- (c) Have the option to set individual goals on individual Subcontracts consistent with the Targeted Business Enterprise Plan;
- (d) Work with the Authority to host, plan, and operate no less than two small business “meet and greet” sessions;
- (e) Actively recruit lower-tier Subcontractors to participate in pre-bid meetings and small business “meet and greet” sessions; and
- (f) Hold a pre-bid meeting for all Subcontracts prior to bid due date.

7.4 Solicitation Phase – Authority. During the solicitation phase (between each Subcontract’s pre-bid meeting and the bid due date), the Authority will:

- (a) Assist the Construction Manager, bidders, and Targeted Businesses with any questions regarding the Targeted Business Program; and
- (b) Provide, upon request, rulings (based upon information reported by the Construction Manager, bidders, and Targeted Businesses) regarding (i) whether an MBE or WBE will be performing a commercially useful function (defined below), and (ii) whether and how an MBE or WBE’s work will be counted toward the Targeted Business Goal.

7.5 Solicitation Phase – Construction Manager. During the solicitation phase (between each Subcontract’s pre-bid meeting and the bid due date), the Construction Manager shall:

- (a) Provide one point of contact to the Authority for the solicitation phase of the Project;
- (b) Comply with the Construction Manager’s Targeted Business Enterprise Plan required by Section 10.8.1 of the Construction Services Agreement; and
- (c) Submit all documentation required by the Authority, including without limitation:
 - (i) The Targeted Business Commitment and Information form (attached hereto as **Exhibit A**) for each bid, which shall identify by name the WBE or MBE that is committed to be



used on the specific Subcontract; the scope of work; and the contract value or percentage of total Subcontract amount represented by the WBE or MBE; and

- (ii) The Subcontractor Information Form (attached hereto as **Exhibit B**), signed by the committed WBE or MBE and the bidder identifying the work and contract value at time of bid.

7.6 Post-Bid Review Phase – Authority. During the post-bid review phase (between each Subcontract’s bid due date and completion of **Exhibit A**, the Authority will:

- (a) Request the Construction Manager to provide Good Faith Effort documents and a plan to carry out Good Faith Efforts during the construction phase;
- (b) Reserve the ability to adjust applicable MBE and WBE contract values based on commercially useful function determinations, incorrect Targeted Business Goal value calculations, or Targeted Business certification rulings; and
- (c) Review **Exhibit A** within 14 calendar days of each bid. The Authority will award a Pass/Award, Pass/Waiver, or Fail for each such **Exhibit A** submitted by the Construction Manager, based on the following criteria:
 - (i) Pass/Award – Bidder committed to contract with MBE and WBE firms that meet or exceed each respective goal for that contract. A Pass/Award signifies that the bidder is to continue in the contract award process;
 - (ii) Pass/Waiver – Bidder did not meet the Targeted Business Goal, but demonstrated sufficient Good Faith Efforts. A Pass/Waiver signifies that the bidder is to continue in the contract award process; or
 - (iii) Fail – Bidder did not meet the Targeted Business Goals and did not demonstrate sufficient Good Faith Efforts. A Fail signifies that the bidder is not recommended to continue in the contract award process.



- 7.7 Post-Bid Review Phase – Construction Manager. During the post-bid review phase (between each Subcontract’s bid due date and completion of the Authority’s review of **Exhibit A**, the Construction Manager shall:
- (a) Provide one point of contact to the Authority for the post-bid review phase of the Project;
 - (b) Provide to the Authority all requested Good Faith Effort documentation within 3 calendar days of the bid; and
 - (c) Provide to the Authority a Good Faith Efforts Plan from the Construction Manager and each selected Subcontractor for the construction phase within 10 calendar days of the bid. This Good Faith Efforts Plan shall address, among other things, how the Subcontractor and Construction Manager intend to address changes to anticipated Targeted Business participation including, for example, changes in participation counting made by the Authority during the bid review phase and changes in scope during the construction phase.
- 7.8 Construction Phase – Authority. During the construction phase (between the award of each Subcontract and Final Payment to the Construction Manager), the Authority will:
- (a) Work with the Construction Manager to identify, prevent, and resolve Targeted Business-related concerns on the Project.
- 7.9 Construction Phase – Construction Manager. During the construction phase (between the award of each Subcontract and final payment), the Construction Manager shall:
- (a) Provide one point of contact to the Authority for the construction phase of the Project;
 - (b) Actively participate in documenting Good Faith Efforts and monitoring;
 - (c) Work with the Authority to identify, prevent, and resolve contract-related issues with Targeted Business concerns on the Project;



- (d) Identify all Targeted Business work for each monthly Application for Payment in a timely and efficient manner, as more specifically described in Section 7.9(f);
- (e) Enter applicable data, including payment data, in the LCP Tracker system operated by the City of Minneapolis Department of Human Rights or other system designated by the Authority; and
- (f) Cooperate with the Authority's ongoing monitoring of the Construction Manager's Good Faith Efforts and submit to the Authority on a monthly basis complete and accurate Targeted Business utilization data including, without limitation, the following:
 - (i) Total Project Cost of the Work;
 - (ii) Total Value of approved Contract Revisions;
 - (iii) Total Value of approved Change Orders to each Subcontractor and Targeted Business;
 - (iv) Time period for which the monthly report covers. This period shall begin on the first day of each month and end on the last day of each month;
 - (v) Total of all Applications for Payments made by the Construction Manager to the Authority as of the last day of the reporting period;
 - (vi) Total payments received by the Construction Manager from the Authority as of the last day of the reporting period;
 - (vii) Name of each WBE, MBE, and VBE the Construction Manager and/or Subcontractor has committed to use at time of respective bid;
 - (viii) Identification of Subcontractors that have hired each WBE, MBE, and VBE;
 - (ix) Identification of each business as a WBE, MBE, and VBE;



- (x) Total contract value for each committed Subcontractor, WBE, MBE, and VBE;
- (xi) Changes, if applicable, to the total contract value for each committed Subcontractor, WBE, MBE, and VBE;
- (xii) Identification of WBE, MBE, and VBE as a Contractor, Supplier, or Broker;
- (xiii) Value of work or supplies claimed by the WBE, MBE, and VBE during the report period;
- (xiv) Value of work or supplies to be counted towards the respective WBE, MBE, and VBE goal during the report period; and
- (xv) Total value of work or supplies invoiced to date and paid to date for each WBE, MBE, and VBE,

which information the Authority may require the Construction Manager to submit to the Authority on a form substantially similar to the CSA Equity Plan Progress Report attached hereto as **Exhibit C**, which form the Authority may amend, from time to time, in its sole discretion.

Section 8. Participation Counting – Targeted Business

- 8.1 Guidelines regarding how MBE and WBE participation is counted toward the Targeted Business Goal are described in **Appendix A**.

Section 9. Commercially Useful Function – Targeted Business

- 9.1 The Authority will determine whether an MBE or WBE is performing a commercially useful function (“CUF”) as described in **Appendix B**.

Section 10. Good Faith Efforts – Targeted Business

- 10.1 The Construction Manager’s responsibility to provide Good Faith Efforts documentation, a Good Faith Efforts Plan, and otherwise engage in Good



Faith Efforts as described by the Targeted Business Plan are independent obligations and are required even if the Targeted Business Goals are met.

- 10.2 The Authority will determine whether the Construction Manager has made Good Faith Efforts to achieve the Targeted Business Goal as described in **Appendix C**.

Section 11. Consequences of Failure to Meet Goals and Failure to Make Good Faith Efforts – Targeted Business

- 11.1 At the end of the Project, and before the Authority makes Final Payment to the Construction Manager, the Authority shall determine, in the Authority's sole discretion, whether the Construction Manager met the Targeted Business Goal. If the Construction Manager fails to meet these goals, the Authority shall also determine, in its sole discretion, whether the Construction Manager made Good Faith Efforts to meet the Targeted Business Goal.
- 11.2 If the Authority determines the Construction Manager failed to make Good Faith Efforts to meet the Targeted Business Goal, the Construction Manager shall be liable to the Authority for the Authority's actual damages for the Construction Manager's failure to make Good Faith Efforts. The Authority also shall withhold payment to the Construction Manager as follows:
 - (a) The Authority shall determine whether the Construction Manager failed to make Good Faith Efforts for the entire Project or for only a part of it.
 - (b) If the Authority determines the Construction Manager failed to make Good Faith Efforts for the entire Project, the Authority shall deduct payment to or assess damages against the Construction Manager in the amount of the difference between the level of Targeted Business participation had Good Faith Efforts been used and the actual Targeted Business participation.
 - (c) If the Authority determines the Construction Manager failed to make Good Faith Efforts for only part of the Project, the Authority shall withhold payment to or assess damages against the Construction Manager in the amount of the difference between the level of Targeted Business participation had Good Faith Efforts



been used for that aspect of the Project, and the actual Targeted Business participation for that aspect of the Project.

- (d) The Authority shall make all determinations in Section 11.2(a)-(c) in the Authority's sole discretion.

- 11.3 Intentionally or recklessly false reporting of Targeted Business data, Good Faith Efforts regarding efforts to achieve Targeted Business goals, or the commercially useful function of reported Targeted Business participation shall be subject to the Minnesota False Claims Act. This liability also flows down and applies to Subcontractors and Suppliers of all tiers to the extent they intentionally or recklessly report similar false data regarding Targeted Business participation on the Project.

Section 12. Workforce Program

- 12.1 The Authority recognizes the legislature's mandate that the Authority establish construction workforce goals for utilization of women and minorities during construction of the Project in a percentage at least equal to the current City of Minneapolis goals, and which also includes efforts to include workers from City of Minneapolis zip codes that have high rates of poverty and unemployment.
- 12.2 In furtherance of the intention of such mandate, the Authority finds it appropriate to adopt this Workforce Program to establish construction workforce utilization goals for the construction work performed by the Authority's Construction Manager and its various Subcontractors.
- 12.3 The Authority adopts the following construction workforce utilization goals that have been adopted by the City of Minneapolis and which are based on the underlying data and intent of the workforce goal program established by the Minnesota Civil Rights Act as implemented by the Minnesota Department of Human Rights:

32% minority

6% female

("Workforce Goals")



These Workforce Goals are subject to change in the Authority's sole discretion based on, for example, the availability of various categories of trade labor, the competition for qualified labor from other concurrent projects, and any changes in the understanding of the supporting data.

- 12.4 The Authority adopts these Workforce Goals because they are the goals adopted by the City of Minneapolis for development projects in the City during the time period 2013 – 2016. The City of Minneapolis, in turn, adopted these goals based on the goals promulgated by the Minnesota Department of Human Rights for Hennepin County.
- 12.5 These goals were first established by the Minnesota Department of Human Rights. The City of Minneapolis then adopted these same goals. Achievement of these goals may be impacted by the nature of the Minnesota workforce, the number of individuals from licensed trades needed for the Project, the number of other large construction projects that will compete for workers with the Project, and the availability issues these and other factors create. Despite the challenges, the Authority is committed to ensuring that the Construction Manager meets the goals or uses all necessary and reasonable good faith efforts to meet these goals. Furthermore, the Authority is confident that the level of participation the Project actually achieves and the training plan that will be implemented will leave a lasting legacy of a larger minority and woman construction workforce. The Workforce Program defines specifically how the goals may be met, the parameters of the Construction Manager's necessary and reasonable good faith efforts to meet the goals, the requirements for reporting and monitoring, the assistance the Authority will provide, and the consequences if the Construction Manager fails to meet the goals and fails to make good faith efforts to achieve the Workforce Goals.
- 12.6 The Construction Manager is required to make Good Faith Efforts (as defined below) set forth in Section 12.3 to achieve the Workforce Goals.
- 12.7 The Authority intends to administer the Workforce Program and may seek assistance from Authority Staff, the City of Minneapolis Civil Rights Department, and the Minnesota Department of Human Rights. The Authority may also seek advice from the City and the Minnesota Department of Human Rights to develop additional policies, procedures, and forms to implement the Workforce Program. The Authority retains sole and complete discretion regarding the policies, administrative procedures, and forms to be developed and adopted.



Section 13. **Definitions – Workforce.** For purposes of the Workforce Program:

- 13.1 “Minority” has the same meaning as “minority” in the Minnesota Department of Human Rights regulations, as follows:
- (a) Black, persons having origins of any of the Black African racial groups not of Hispanic origin;
 - (b) Hispanic, persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;
 - (c) Asian and Pacific Islander, persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and
 - (d) American Indian or Alaskan Native, persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- 13.2 “Subcontractor” means any entity the Construction Manager contracts with for any part of the Project performing work on the job-site. “Subcontractor” also includes Subcontractors of any tier to the Construction Manager.
- 13.3 “Good Faith Efforts” means the necessary and reasonable efforts to meet the Workforce Goals, including without limitation the Good Faith Efforts described in this Workforce Program and Section 17.

Section 14. **Affirmative Action Certificate - Workforce.**

- 14.1 The Construction Manager and all Subcontractors are required to submit affirmative action plans and obtain a certificate of compliance from the Authority, the City of Minneapolis Department of Human Rights, the Minnesota Department of Human Rights, or other governmental body as determined by the Authority in its sole discretion, pursuant to Minn. R. 5000.3560, subp. 1(A). The Construction Manager and all its Subcontractors must maintain certificates of compliance throughout the Project, regardless of any exemptions that might otherwise apply under the Minnesota Department of Human Rights regulations.



Section 15. Compliance & Counting- Workforce.

- 15.1 The extent to which hours worked on the Project by minority and female workers count toward the Workforce Goals shall be determined as provided by **Appendix D.**

Section 16. Monitoring and Reporting – Workforce.

- 16.1 The Construction Manager is responsible for accurately collecting data from its own workforce of minorities and women and those of its Subcontractors of all tiers and promptly and regularly reporting it to the City and other governmental entities as directed by the Authority. The Construction Manager shall collect and report the data in a manner and form prescribed by the City or other governmental entities as directed by the Authority.
- 16.2 The Authority may request certain compliance and auditing services from the City of Minneapolis and the Minnesota Department of Human Rights. These services may include, for example, spot checking and on-site-auditing of the workforce utilization numbers reported by the Construction Manager and its Subcontractors of all tiers.
- 16.3 The Construction Manager must provide, at minimum, a report containing the following information on a monthly and cumulative basis throughout the Project, separated by Subcontract, by trade, and supported by certified payrolls including every person who works on the Project jobsite as part of the Construction Services Agreement:
- (a) total hours of employment on the Project;
 - (b) total hours of employment of women;
 - (c) total hours of employment of minorities; and
 - (d) employee zip codes.

Section 17. Good Faith Efforts – Workforce.

- 17.1 The Construction Manager’s responsibility to use Good Faith Efforts as described by the Workforce Program is an independent obligation and is required even if the Workforce Goals are met.



- 17.2 The Authority will determine whether the Construction Manager has made Good Faith Efforts to achieve Workforce Goals as described in **Appendix E**.

Section 18. Consequences of Failure to Meet Goals and Failure to Make Good Faith Efforts – Workforce.

- 18.1 Intentionally or recklessly false reporting of workforce data, good faith efforts regarding efforts to achieve workforce goals, or the commercially useful function of reported workforce labor shall be subject to the Minnesota False Claims Act. This liability also flows down and applies to the Construction Manager’s Subcontractors of all tiers to the extent they intentionally or recklessly report similar false data regarding workforce participation by minorities or women on the Project.
- 18.2 If the Construction Manager or its Subcontractors of any tier do not utilize Good Faith Efforts to achieve the Workforce Goal, then the Construction Manager (a) shall be liable for paying the Authority the costs of the Authority’s compliance enforcement in making its Good Faith Efforts determination and (b) shall cure the Workforce Goal shortfall to the extent caused by its lack of Good Faith Efforts. If the Construction Manager cannot cure the shortfall caused by its lack of Good Faith Efforts due to the stage of construction and/or its schedule status on the Project, the Construction Manager shall pay the Authority the cost to train the number of minorities and women that reasonably would have been employed on the Project but for the Construction Manager’s lack of Good Faith Efforts, so that they are trained and available to work on future projects. The cost of proper training shall be determined by the Authority in its sole discretion, which determination will be final and binding on the Construction Manager unless arbitrary and capricious.

Section 19. Data Collection and Reporting

- 19.1 The Construction Manager and Subcontractors shall promptly and regularly comply with the Authority’s requests to submit data, in electronic form or otherwise as directed by the Authority, regarding the Targeted Business Program, the Workforce Program, and other aspects of this Equity Plan.
- 19.2 The Construction Manager and Subcontractors shall submit the requested data directly to the Authority, the City of Minneapolis, the Minnesota



Department of Human Rights, or other governmental agency as directed by the Authority.

- 19.3 The Authority, in its discretion, may coordinate with the City of Minneapolis, the Minnesota Department of Human Rights, or other appropriate governmental agency to manage and document Targeted Business Program activity and Workforce Program activity throughout the Project.

Section 20. Employment Assistance Firm

- 20.1 Pursuant to Minn. Stat. § 473J.12, the Authority will issue a Request for Proposals for an employment assistance firm, preferably minority-owned, or owned by a disabled individual or a woman, to create an employment program to recruit, hire, and retain minorities for the Stadium facility. The Authority intends to supplement its statutory mandate and engage an employment assistance firm to identify, train, and facilitate the hiring and utilization of minorities, women, and veterans by the Construction Manager and its Subcontractors hired to construct the Project.
- 20.2 Construction. The Authority will issue a Request for Proposal to create an employment program to identify, train, recruit, and facilitate the hiring and utilization of minorities, women, and veterans by the Construction Manager and its Subcontractors hired to construct the Project.
- 20.3 Facility Operation. The Authority will issue a Request for Proposal to create an employment program to identify, train, recruit, and facilitate the hiring and utilization of minorities, women, and veterans to work in the Stadium facility after it is constructed.

Section 21. Veterans Inclusion Program

- 21.1 For purposes of the Veterans Inclusion Program, a small veteran-owned business (“VBE”) is a firm certified as a Service-Disabled Veteran Owned Small Business (SDVOSB) or a Veteran Owned Small Business (VOSB) by the United States Department of Veteran Affairs. Each VBE also must be a Minnesota-based business.
- 21.2 To encourage participation in the Project by VBEs, during the pre-solicitation phase (between the award of the Construction Services



Agreement and the pre-bid meeting(s) for each Subcontract), the Authority will:

- (a) work with business support organizations in the veteran community to ensure Minnesota-based VBEs are aware of opportunities on the Project;
- (b) participate in Project information session meetings designed for VBEs; and
- (c) solicit VBEs to participate in the Project's small "meet and greet" sessions.

21.3 To encourage participation in the Project by VBEs, during the pre-solicitation phase (between the award of the Construction Services Agreement and the pre-bid meeting(s) for each Subcontract), the Construction Manager shall:

- (a) participate in Project information session meetings designed for VBEs; and
- (b) solicit VBEs to participate in the Project's small "meet and greet" sessions.

21.4 During the construction phase (between the award of each Subcontract and final payment), the Construction Manager and the Authority will monitor, count, and report VBE participation in the Project in the same manner as the Targeted Business Program as outlined in the Equity Plan, including without limitation Section 7.9(f) and Appendices A, B, and C.

21.5 To encourage participation in the Project by veterans as part of the construction workforce, the Authority will collaborate with and communicate Project job and training opportunities to veterans organizations, such as Minnesota Department of Veteran Affairs, Helmets to Hardhats, and other veterans organizations that provide employment and training assistance.

21.6 To encourage participation in the Project by veterans as part of the construction workforce, the Construction Manager shall:



- (a) Collaborate with the employment assistance firm(s) and the employment program(s) described in Section 20 to increase recruitment and training of Minnesota veterans for the Project; and
- (b) Identify veterans in the data, including payment data, entered into the LCP Tracker system operated by the City of Minneapolis Department of Civil Rights or other system designated by the Authority.



APPENDIX A - Targeted Business Participation Counting

- (a) When a Targeted Business participates in a contract, count only the value of the work actually performed by the Targeted Business toward the Targeted Business Goal.
 - (1) Count the entire amount of that portion of a contract that is performed by the Targeted Business's own forces. Include the cost of supplies and materials obtained by the Targeted Business for the work of the contract, including supplies purchased or equipment leased by the Targeted Business (except supplies and equipment the Targeted Business Subcontractor purchases or leases from the Construction Manager or its affiliate).
 - (2) Count the entire amount of fees or commissions charged by a Targeted Business firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the contract, toward Targeted Business Goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a Targeted Business subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward Targeted Business goals only if the Targeted Business's Subcontractor is itself a Targeted Business. Work that a Targeted Business subcontracts to a non-Targeted Business firm does not count toward Targeted Business Goal.
- (b) When a Targeted Business performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the Targeted Business performs with its own forces toward Targeted Business Goal.
- (c) Count expenditures to a Targeted Business contractor toward Targeted Business Goal only if the Targeted Business is performing a commercially useful function on that contract.
 - (1) A Targeted Business performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the Targeted Business must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a Targeted Business is performing a commercially useful function,



evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the Targeted Business credit claimed for its performance of the work, and other relevant factors.

- (2) A Targeted Business does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of Targeted Business participation. In determining whether a Targeted Business is such an extra participant, examine similar transactions, particularly those in which Targeted Businesses do not participate.
 - (3) If a Targeted Business does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the Targeted Business subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a commercially useful function.
 - (4) When a Targeted Business is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the Targeted Business may present evidence to rebut this presumption, including normal industry practices for the type of work involved.
- (d) Use the following factors in determining whether a Targeted Business trucking company is performing a commercially useful function:
- (1) The Targeted Business must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting Targeted Business goals.
 - (2) The Targeted Business must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The Targeted Business receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The Targeted Business may lease trucks from another Targeted Business firm, including an owner-operator who is certified as a Targeted Business. The Targeted Business who leases trucks from another Targeted Business receives



credit for the total value of the transportation services the lessee Targeted Business provides on the contract.

- (5) The Targeted Business may also lease trucks from a non-Targeted Business firm, including from an owner-operator. The Targeted Business who leases trucks from a non-Targeted Business is entitled to credit for the total value of transportation services provided by non-Targeted Business lessees not to exceed the value of transportation services provided by Targeted Business-owned trucks on the contract. Additional participation by non-Targeted Business lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. *The Construction Manager or Subcontractor is not required to obtain additional permission to use this “matching manner” method of counting participation described in this paragraph (d)(5).

Example to this paragraph (d)(5): Targeted Business Firm X uses two of its own trucks on a contract. It leases two trucks from Targeted Business Firm Y and six trucks from non-Targeted Business Firm Z. Targeted Business credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, Targeted Business credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

- (6) For purposes of this paragraph (d), a lease must indicate that the Targeted Business has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the Targeted Business, so long as the lease gives the Targeted Business absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the Targeted Business.
 - (7) All Targeted Business suppliers and trucking firms on the Project are required to participate in a semi-annual Targeted Business Counting Check with the Authority to ensure accurate reporting.
- (e) Count expenditures with Targeted Businesses for materials or supplies toward Targeted Business goals as provided in the following:



- (1)
 - (i) If the materials or supplies are obtained from a Targeted Business manufacturer, count 100 percent of the cost of the materials or supplies toward Targeted Business Goal.
 - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (2)
 - (i) If the materials or supplies are purchased from a Targeted Business regular dealer, count 60 percent of the cost of the materials or supplies toward Targeted Business Goal.
 - (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).



- (3) With respect to materials or supplies purchased from a Targeted Business which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward Targeted Business goals, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward Targeted Business goals.
- (4) Fill, sand, gravel and other natural materials are counted at the supplier value of 60% regardless of pit of origin ownership.
- (5) A Targeted Business certified as a supplier may perform both the supplier role and broker role under the same contract. Items purchased directly and solely by the Targeted Business supplier from the manufacturer will be counted at the supplier value of 60%. Items purchased directly and solely by the Targeted Business supplier from another supplier or wholesaler will only count at the broker rate of 5%.
- (6) Specialized or “to specification” equipment purchases are presumptively considered only able to be brokered.
- (7) A Target Business certified as a broker may only count at the broker rate of 5% for all project work.
- (8) The determination between supplier and broker action may change for Targeted Business suppliers from bid/commitment phase to construction phase.
- (9) A Targeted Business contractor who performs the installation, connection, application of materials may only count the cost of supplies or materials towards the goal if:
 - (i) The Targeted Business purchases the supplies or materials itself and
 - (ii) Industry practice supports and is structured for the supplies or materials to be purchased by the Targeted Business, including without limitation structural steel, rebar, and paint and other coatings.



- (f) Participation by a woman-owned Targeted Business certified as an MBE counts only toward the Targeted Business Goal for MBEs, even if the MBE is certified as a WBE or is able to be certified as a WBE.



APPENDIX B – Targeted Business Commercially Useful Function (“CUF”)

CUF Site Visits

- (a) An Authority representative will perform at least one site visit for each Targeted Business performing under a contract on the Project for the purpose of determining whether the Targeted Business is performing a “commercially useful function” (“CUF”) as described in Appendix A.
- (b) The Authority will conduct at a minimum one site visit for each Targeted Business to determine that the Targeted Business is providing a CUF. The Authority will document each site visit and applicable support documentations.
- (c) CUF site visits are intended to be performed on the construction site or applicable place of business. In situations when it is not feasible to perform the CUF site visit on location, the Targeted Business will provide all documentation to demonstrate CUF compliance.
- (d) CUF site visits documentation includes photographs, brief interviews with staff, correspondence, and copies of business transactions.
- (e) The CUF site visit will be documented in a standardized form and retained by the Authority.
- (f) Data from the CUF form will be retained by the Authority for auditing purposes.

CUF Review

- (g) The Authority may conduct a CUF Review if the Authority has concerns whether a Targeted Business is performing a commercially useful function.
- (h) The Authority performs a CUF Review by collecting data, including site visit reports, photographs, and interview information. The Authority then analyzes the data and produces a CUF Finding which may, in the Authority’s discretion, provide adjustments to whether and how the Targeted Business’ participation is counted toward the Targeted Business Goals.



APPENDIX C – Targeted Business Good Faith Efforts

- (a) The Construction Manager must make Good Faith Efforts to achieve the Equity Plan’s Targeted Business Goal. Many of the Good Faith Efforts are described in Section 7, including without limitation the monitoring and reporting activities in the various phases in Section 7. This Appendix identifies a non-exclusive list of factors the Authority may consider when determining whether the Construction Manager has exercised Good Faith Efforts.
- (b) The Authority shall determine if the Construction Manager has made adequate Good Faith Efforts. If the Construction Manager fails to make adequate Good Faith Efforts, the consequences are discussed in Section 11.
- (c) Because the Construction Manager is not a Targeted Business, the Construction Manager’s Good Faith Efforts to achieve the Targeted Business Goal necessarily must focus on obtaining participation of Targeted Business firms hired by the Construction Manager as Subcontractors or qualified joint venture partner.
- (d) The Construction Manager must make the good Good Faith Efforts described herein beginning with its solicitation of potential Subcontractors.
- (e) Documentation. The Authority has developed the forms described in Section 7 and may develop such other forms, affidavits, and other documentation the Authority deems appropriate for the Construction Manager to document its Good Faith Efforts to meet the Targeted Business Goal and allow the Authority to determine whether Good Faith Efforts have been made. The Construction Manager and its Subcontractors shall complete the forms the Authority requests them to complete.
 - (1) The Authority shall determine what information is required from the Construction Manager, proposed Subcontractors, or others as the Authority deems appropriate to evaluate the Construction Manager’s Good Faith Efforts, and shall determine what reviews, examinations and assessments of information are appropriate for such evaluation.
 - (2) Before the Construction Manager enters into a contract with any Subcontractor, the Construction Manager must submit to the Authority any forms that the Authority deems appropriate.
 - (3) The Construction Manager must require its Subcontractors to engage in similar Good Faith Efforts as required by the Authority, and to similarly flow down their Good Faith Efforts requirements to lower tier Subcontractors. References in these



requirements to the Construction Manager shall also be deemed to refer to its Subcontractors and such lower tier Subcontractors with respect to their obligations to use Good Faith Efforts.

(f) Removal of MBE or WBE

- (1) The Construction Manager shall notify the Authority before the Construction Manager terminates a contract with a Targeted Business, changes the scope of the Targeted Business's contract, or otherwise releases a Targeted Business from performing work on the Project ("Removal Action").
- (2) The Authority will permit the Construction Manager to take a Removal Action when:
 - (i) The work committed to the Targeted Business was eliminated or adjusted via approved change order.
 - (ii) The Authority has verified that the Targeted Business is no longer in business or is unable to perform acceptable work under the contract.
 - (iii) Any resolved legal situation that impacts the ability for the Targeted Business to perform work.
 - (iv) The Targeted Business has defaulted on the terms of its Subcontract and can no longer perform the work as required.
- (3) To the extent a proper Removal Action is taken by the Construction Manager, the Construction Manager must make Good Faith Efforts as described herein to replace those firms with other Targeted Business firms, or otherwise increase Targeted Business participation to offset the loss of Targeted Business participation.

(g) Non-Exclusive List of Factors. In addition to compliance with the various reporting and monitoring requirements described in this Equity Plan or developed by the Authority, the following is a list of non-exclusive factors the Authority may consider in making a determination whether the Construction Manager has made adequate Good Faith Efforts to meet the Targeted Business Goal:

- (1) Soliciting through all reasonable and available means (attendance at pre-bid meetings, advertising and/or written notices) the interest of as many Targeted



Business firms as reasonably possible presently certified in the scopes of work of the contract.

- (2) Soliciting Targeted Business firms in reasonably sufficient time prior to bid opening or the proposal deadline to allow Targeted Business firms to respond to solicitations, or allowing sufficient time for Targeted Business firms to respond to solicitations prior to finalizing selections of Subcontractors. The Construction Manager must determine with certainty if the Targeted Business firms are interested by taking and documenting appropriate steps to follow up on initial solicitations.
- (3) Selecting portions of the work to be performed by Targeted Business firms in order to increase the likelihood that the participation goals will be achieved. This includes, where appropriate, breaking contract work into smaller units to facilitate Targeted Business participation.
- (4) Providing interested Targeted Business firms with adequate information about the requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (5) Negotiating in good faith with interested Targeted Business firms and providing written documentation of such negotiation with each such business. In determining whether the Construction Manager negotiated in good faith, the Authority may consider a number of factors including price, scheduling and capabilities as well as the contract goal.
- (6) The fact that there may be some additional costs involved in finding and using Targeted Business firms is not itself sufficient reason for the Construction Manager's failure to meet the participation goals as long as such costs are reasonable.
- (7) If requested by a solicited Targeted Business firm, the Construction Manager must make reasonable efforts to assist such Targeted Business firms in obtaining financing, training, or insurance as may be appropriate for their work on the Project, provided that the Construction Manager need not provide financial assistance toward this effort.
- (8) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of Targeted Business firms.



APPENDIX D – Workforce Compliance and Counting

Pursuant to Section 12.7 of the Equity Plan, the Authority may seek advice from the City of Minneapolis and the Minnesota Department of Human Rights for the purpose of establishing additional policies, procedures, and forms for the workforce program, including compliance and counting.

Until the Authority, in its sole discretion, adopts specific policies, procedures, and forms regarding how workforce participation by minorities and women is counted toward the Workforce Goal, the Authority will use the following guidelines:

- (a) The Workforce Goal is expressed as a percentage of the total hours worked by individuals performing eligible work (“Workforce Work”) as part of the Construction Services Agreement, whether the workers are employed by the Construction Manager or Subcontractors of any tier;
- (b) Workforce Work means work performed on the Project job-site; and
- (c) Every hour of Workforce Work performed by an eligible minority or woman counts toward the Workforce Goal.
- (d) Every hour of Workforce Work performed by an eligible minority woman counts toward both the minority Workforce Goal and the female Workforce Goal.



APPENDIX E – Workforce Good Faith Efforts

- (a) The Construction Manager must make Good Faith Efforts to achieve the Equity Plan’s Workforce Goal. Many of the Good Faith Efforts are described in Section 16, including without limitation cooperation with the monitoring and reporting activities. This Appendix identifies certain minimum requirement for Good Faith Efforts as well as a list of additional non-exclusive factors the Authority may consider when determining whether the Construction Manager has exercised Good Faith Efforts.
- (b) The Construction Manager is required to take the following steps as part of its Good Faith Efforts:
 - (1) Make a good faith effort to maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Construction Manager's employees are assigned to work. The Construction Manager must specifically ensure that all lead supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the Construction Manager’s obligation to maintain such a working environment, with specific attention to minority or female persons working at such sites or in such facilities.
 - (2) Establish and maintains a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (3) Utilize the Construction Works database to maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each person. If the person was sent to the union hiring hall for referral and was not referred back to the Construction Manager by the union or, if referred, not employed by the Construction Manager, this must be documented in the file with the reason therefore, along with whatever additional actions the Construction Manager may have taken.
 - (4) Provide immediate written notification to the Authority when the union or unions with which the Construction Manager has a collective bargaining agreement has not referred to the Construction Manager a minority person or woman sent by the Construction Manager, or when the Construction Manager has other information that the union referral process has impeded the Construction Manager’s efforts to meet its obligations.



- (5) Develop on-the-job training opportunities and/or participate in and pay for training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the state of Minnesota. The Construction Manager must provide notice of these programs to the sources compiled under Paragraph (b)(2).
- (6) Disseminate the Construction Manager's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Construction Manager in meeting its equal employment opportunity obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company equal employment opportunity policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's equal employment opportunity policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general lead supervisors, etc., prior to the first day of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Construction Manager's equal employment opportunity policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Construction Manager's equal employment opportunity policy with other contractors and Subcontractors with whom the Construction Manager does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs, including zip codes in the City of Minneapolis with high rates of poverty and unemployment. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source the Construction Manager must send



written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit other minority persons and women.
 - (11) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Construction Manager's obligations under these specifications are being carried out.
 - (12) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy.
 - (13) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (14) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Construction Manager's equal employment opportunity policies and affirmative action obligations.
- (c) The following is a list of additional non-exclusive factors the Authority may consider when determining whether the Construction Manager has exercised good faith efforts:
- (1) Timely submission of compliance review reports;
 - (2) Construction Manager's cooperation with on-site compliance reviews and audits;
 - (3) Construction Manager's compliance with making available records or other information as required by the Workforce Program;
 - (4) Participating in voluntary associations which assist in fulfilling one or more of their good faith obligations in Paragraphs (b)(1) to (b)(14). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Construction Manager is a member and participant, may be asserted as fulfilling any one or more of its obligations provided that the Construction Manager actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and



women in the industry, ensures that the concrete benefits of the program are reflected in the Construction Manager's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Construction Manager. The obligation to comply, however, is the Construction Manager's and failure of such a group to fulfill an obligation must not be defense for the Construction Manager's noncompliance.

- (d) The Authority also may consider whether the Construction Manager takes prompt corrective action if and when it becomes aware that any of the following conditions exist with regard to its workforce:
- (1) underutilization of women or minorities in any job group;
 - (2) minority or female employees move laterally, vertically, at a lesser rate than nonminority or male employees;
 - (3) a selection process eliminates minorities or women at higher rate than nonminority or male employees;
 - (4) pre-employment inquiries and application forms do not satisfy state law requirements;
 - (5) descriptions of jobs do not accurately reflect functions involved;
 - (6) selection procedures are not valid predictors of job performance;
 - (7) disproportionately high rejection of women or minorities by hiring supervisors;
 - (8) women, minorities, and disabled persons who are not participating in company-sponsored activities;
 - (9) segregation still exists at some facilities;
 - (10) disparities by minority group status or sex in terms of length of service and type of job held;
 - (11) managers, supervisors, or employees lack interest in company equal employment opportunity policies;
 - (12) underrepresentation of women or minorities in training or career improvement programs;



- (13) techniques for evaluating effectiveness of its equal employment opportunity programs have not been established; and
- (14) inadequate display of equal employment opportunity posters.

Exhibit A



**CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

Proposer Company Name: _____

Check ONE of the following:

No Targeted Business participation is committed on this project

The following Targeted Business (MBE & WBE) participation is committed on this project:

Firm Name (Legal business name used for Targeted Business certification)	WBE MBE (Check one)		How will firm participate? (subcontractor, consortium, joint venture)	Description of work	Estimated dollar value of participation	Estimated percentage of total bid
				Total WBE %	Total MBE %	

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



**CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

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

(Check ONE of the following)

No Targeted Business (MBE or WBE) participation is committed on this project.

Proposer is committed to use the Targeted Business contractor(s) listed in this form on this project at the stated percentage(s).

I further certify that I have read the Targeted Business requirements found in the Construction Services Agreement Equity Plan. I am authorized on behalf of the Proposer to submit this certification to the Minnesota Sports Facilities Authority.

This certification is a material representation of fact on which the Authority may rely in awarding the contract.

Proposer Name: _____

By: _____

Date: _____

Name: _____

Title: _____

Exhibit B



**CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN
TARGETED BUSINESS INFORMATION FORM**

Check ONE of the following:

- No Targeted Business will be used by Proposer on this project.
- Targeted Businesses are proposed to be used on this project.

The following is

- 1) a list of Targeted Businesses proposed to be used on the project AND
- 2) a list of Targeted Businesses who were considered by the Proposer for the project but were not selected by the Proposer:

1) TARGETED BUSINESS PROPOSED TO BE USED ON THE PROJECT:

Firm Name	Address	Telephone Number

2) TARGETED BUSINESS WHO WERE CONSIDERED BUT WERE NOT SELECTED:

Firm Name	Address	Telephone Number

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



CERTIFICATION

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

Proposer
Name: _____

By: _____ Date: _____

Name: _____

Title: _____

END OF DOCUMENT

Exhibit C

CSA Equity Plan Progress Report*

1. Project #:		9. Original Contract Amount:		
2. Project Title:		10. Change Orders To Date:		
3. Construction Manager:		11. Revised Contract Amount:	\$0.00	
4. Type of Services:		12. Total Earned To Date:		
5. Contract #:		13. Contract Dollars Remaining:	\$0.00	
6. Contract Award Date:		14. Amount Paid to Date:		
7. Payment Claim #:		15. Percent Paid to Date:		
8. Progress Report #:				

PROJECT GOAL 11% WBE 9% MBE | CONTRACT COMMITMENT % WBE % MBE

___ Interim Report
___ Final Report

Reporting Period: From to

A) W/MBE Subcontractor (SEE INSTRUCTION 1)	B) \$\$ Amount of Original W/MBE	C) Non- W/MBE Sub- contractor	D) \$ Amount to Non- W/MBE	E) \$ Amount in Change Orders to W/MBE Contract	F) Total W/MBE Contract \$\$ Amount	G) \$\$ Amount to be paid to W/MBE	H) \$\$ Amount Paid To W/MBE	I) W/MBE%
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
					\$0.00			#DIV/0!
	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	
Total W/MBE Contract \$\$ Amount as % of Total Contract Amount (#11):							#DIV/0!	
\$\$ Amount Paid to W/MBE To Date as % of Total Contract Amount Paid To Date (#14)							#DIV/0!	#DIV/0!

Explanation if W/MBE Goal Not Being Met or Other Comments: **Total W/MBE %**

Signature:		Date:		
Title:				

INSTRUCTIONS:

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

Authority Representative Signature _____ Date _____

*Note that formatting may change.

EXHIBIT 4
CONSTRUCTION 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 Effective Date, and, subject to authorized adjustments and excusable delays as allowed by the Trade Contract Agreement, Trade Contractor shall achieve Project Milestone Dates and Substantial Completion of its Trade Contractor Work in accordance with this **Exhibit 4**.

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

Milestone Dates of the Trade Contractor Work that must be complete in accordance herewith are outlined on the Outline of Construction Schedule below. For purposes of this **Exhibit 4**, "**Scheduled Substantial Completion Date**" shall mean July 29, 2016 and "**Guaranteed Completion Date**" shall mean the date set forth across from the corresponding unit or phase of Trade Contractor Work on the Outline of Construction Schedule set forth 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 acknowledge and agree, in accordance with **Paragraph 2.11** 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 Milestone Dates for Trade Contractor's Work in the Outline of Construction Schedule or if Trade Contractor's Work is interfering with or delaying the Construction Manager's work and timely Completion of the Construction Manager's work pursuant to the Master Project Schedule.

The Parties hereto further acknowledge and agree that:

- (1) The Trade Contractor will pay liquidated damages in the amount of (a) \$20,000 for every Day after the Scheduled Substantial Completion Date that the entire Trade Contractor Work has not achieved Substantial Completion; plus (b) \$250,000 for every Scheduled Event after the Scheduled Substantial Completion Date that the Trade Contractor has not achieved Substantial Completion; plus (c) \$2,500,000 for every NFL game (preseason and regular season) after the Scheduled Substantial Completion Date that the Trade Contractor has not achieved Substantial Completion. Trade Contractor's aggregate liability for liquidated damages that may be imposed by the Authority shall not exceed Six Million Dollars (\$6,000,000). Trade Contractor's delay in achieving Substantial Completion shall be excused only as provided in the Trade Contract Agreement. Only approved Contract Revisions will be used to document excused delays.
- (2) The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, loss of profits, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by the Authority which arise solely due to a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date; provided that such liquidated damages shall not in any way detract from

EXHIBIT 5
BONDS

The Payment and Performance Bond forms that the Trade Contractor is required to provide related to its Trade Contractor Work are attached as **Exhibit 5**.

Not required.

EXHIBIT 6
PROJECT LABOR AGREEMENT

The Project Labor Agreement applicable to the Trade Contractor Work is attached as **Exhibit 6**.

**PROJECT LABOR AGREEMENT
FOR
MINNESOTA MULTI-PURPOSE STADIUM**

ARTICLE I

PURPOSE

This Project Labor Agreement ("Agreement") is entered into this 22nd day of November 2013, by and between M.A. MORTENSON COMPANY ("Project Contractor") and the MINNEAPOLIS BUILDING AND CONSTRUCTION TRADES COUNCIL (hereinafter called the "Council"), acting on its own behalf and on behalf of all the Building Trades Local Unions affiliated with the Council (hereinafter collectively called the "Union" or "Unions"), with respect to the construction of the MINNESOTA MULTI-PURPOSE STADIUM, (hereinafter called the "Project").

The term "Contractor" shall include all construction contractors and subcontractors of whatever tier engaged in onsite construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to M.A. MORTENSON COMPANY alone is intended, the term "Project Contractor" is used.

The Parties to this Agreement acknowledge that the construction of the Project is important to the development of MINNESOTA MULTI-PURPOSE STADIUM. The Parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor-management cooperation and stability.

The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craftworkers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craftworkers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier, agree not to engage in any lockout,

and the Unions agree not to engage in any strike, slow-down, or interruption or other disruption of or interference with the work covered by this Agreement.

ARTICLE II

SCOPE OF AGREEMENT

Section 1. This Agreement shall apply and is limited to the recognized and accepted historical definition of new construction work under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work. The term "dedicated off-site work" as used herein means off-site construction work that is specifically and exclusively dedicated to the Project, did not exist before the Project, and will not exist after the Project is concluded. The scope of this Agreement excludes off-site fabrication, off-site manufacturing, and delivery.

The Project is defined as:

Site preparation and construction activities required to build the Stadium and Stadium Infrastructure, in accordance with the construction services agreement, and any amendments thereto, executed between the Minnesota Sports Facilities Authority and the Project Contractor, as those terms are defined in the construction services agreement.

It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement to accept and be bound by the terms and conditions of this Project Agreement by executing the Letter of Assent (Attachment A) prior to commencing work. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instruments calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Articles VIII (Work Stoppages and Lockouts), IX (Disputes and Grievances), and X (Jurisdictional Disputes) of this Project Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor the Contractors will be obligated to sign any other local, area, or national agreement.

Section 2. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function which may occur at the Project site or be associated with the development of the Project.

Section 3. This Agreement shall only be binding on the signatory parties hereto and their heirs, successors, and assigns, and shall not apply to their parents, affiliates or subsidiaries. The Council represents that it has the authority to legally bind itself and each of the Unions

referenced in the attached Schedule B, and to execute the Agreement on their behalf. The Council will make available for review, upon request by Mortenson, sufficient evidence that the Council has such authority to bind each Union.

Section 4. The Owner and/or the Project Contractor have the absolute right to select any qualified bidder for the award of contracts on this Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

Section 5. Items specifically excluded from the scope of this Agreement include but are not limited to the following: as listed in Attachment B.

Section 6. The provisions of this Project Agreement shall not apply to the Minnesota Sports Facilities Authority (hereinafter "Owner") and Minnesota Vikings Football, LLC (hereinafter "Team"), and nothing contained herein shall be construed to prohibit or restrict the Owner or the Team or its employees from performing work not covered by this Project Agreement on the Project site. As areas and systems of the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner for the Project.

Section 7. It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

Section 8. It is understood that the liability of any employer and the liability of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, the Team, Contractor(s) or any employer.

Section 9. It is understood and agreed that all Project work within the scope of the Agreement must be performed by employees of employers bound by the terms of this Agreement.

ARTICLE III

UNION RECOGNITION

Section 1. The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

Section 2. The hiring of employees shall be governed by the procedures set forth in the collective bargaining agreements which form Schedule A, except that employers not party to any Agreements which form Schedule A will be entitled to retain their core employees, defined as no

more than 15% of the employer's construction employee workforce assigned to work on the Project, when commencing work on the Project. Unions recognize that all such hiring for the Project shall be subject to all necessary and reasonable good faith efforts to support accomplishment of the Equity Plan adopted by the Owner, and Unions agree to work and cooperate with the Employment Assistance Firm retained by the Owner to identify, train, and facilitate the hiring and utilization of minorities, women, and veterans for work on the Project. It is further agreed that there shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in a union or based on race, creed, color, sex, age, or national origin of such employee or applicant.

Section 3. All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable collective bargaining agreement in Schedule A.

ARTICLE IV

UNION REPRESENTATION

Section 1. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees and further provided that such representatives fully comply with posted visitor and security and safety rules of the Project.

Section 2. Each signatory Union shall have the right to designate a working journeyman as a steward, and shall notify the Project Contractor in writing of the identity of the designated steward prior to the assumption of his or her duties as steward. Such designated steward shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay of their respective crafts.

ARTICLE V

WAGES AND BENEFITS

Section 1. All employees covered by this Agreement shall be classified in accordance with work performed and paid the base hourly wage rates for those classifications as specified in the applicable local collective bargaining agreements ("CBAs") in attached Schedule A.

Section 2. The Contractors agree to pay contributions to the established employee fringe benefit funds in the amounts designated in the applicable CBAs in Schedule A; provided, however, that the Contractors and the Unions agree that only such bona fide employee benefits as accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation, apprenticeship and training funds, etc.) shall be included in this requirement and paid by the Contractors on the Project. If any new bona fide, jointly trustee fringe benefit funds are established in any of the CBAs in Schedule A during the life of this Agreement, the Contractors agree to pay the contributions required by the applicable CBA to the new fund.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be made

into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

ARTICLE VI

HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 1. The work week and work day shall be determined as set forth in the applicable Schedule A CBA.

Section 2. Overtime pay shall be established by reference to the applicable Schedule A CBA.

Section 3. It shall not be a violation of this Agreement if the Project Contractor considers it necessary to suspend all or portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the employer requests employees to remain at the site and available for work, the employees will be compensated for the standby time at their base hourly rate of pay.

Section 4. Shift work will be performed in accordance with the currently existing Schedule A CBA.

Section 5. Recognized holidays on this Project shall be those in the Schedule A CBAs in existence for the appropriate Unions on the date of this Project Agreement as contained in the attached Schedule A. There shall be no change in the established holiday schedules and the days upon which those holidays are celebrated, except by mutual agreement.

ARTICLE VII

MANAGEMENT'S RIGHTS

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

ARTICLE VIII

WORK STOPPAGES AND LOCKOUTS

Section 1. During the term of this Agreement there shall be no strikes, picketing, work stoppages, slow downs, sympathy strikes or actions, hand-billing (and similar visible demonstrations), or other disruptive activity for any reason by the Council, a Local Union or by any employee, and there shall be no lockout by the Contractor. Failure of the Council, Union or employee to cross any picket line established at the Project site is a violation of this Article.

Section 2. The Council and Local Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing, sympathy strikes or actions, hand-billing (and similar visible demonstrations), or any other disruptive activity at the Contractor's project site and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.

Section 3. Neither the Council nor any Union shall be liable for acts of employees for whom it has no responsibility. The Building Trades Council Business Manager will immediately instruct, order and use the best efforts of his office to cause the Union or Unions to cease any violations of this Article. By complying with this obligation the Building Trades Council shall not be liable for unauthorized acts of a Union. The principal officer or officers of a Union will immediately instruct, order and use the best efforts of his or her office to cause the employees that the Union represents to cease any violations of this Article. A Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.

ARTICLE IX

DISPUTES AND GRIEVANCES

Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.

Section 2. The Contractors, Unions, and the employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

Section 3. Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

Step 1. (a) When any employee subject to the provisions of this Agreement feels he or she is aggrieved by a violation of this Agreement, he or she, through his or her local union business representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor stating the provision(s) alleged to have been violated. The business representative of the Union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting but not later than two (2) working days thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within forty-eight (48) hours thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.

(b) Should the Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager of the Council, the Director of Operations of the Project Contractor, and the involved Contractor shall meet within seven (7) working days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. If the parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days thereafter.

Step 3. (a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) arbitrators in a sub-regional panel from which the Arbitrator shall be selected by the parties alternatively striking names from the list. The first strike shall be determined by the toss of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on

issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

Section 4. The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3 and shall, upon their request, be permitted to participate in all proceedings at these steps.

ARTICLE X

JURISDICTIONAL DISPUTES

Section 1. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

Section 2. All jurisdictional disputes on this Project, between or among Unions and employers, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.

Section 3. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, slow-down, sympathy strikes or actions, handbilling or disruptive activity of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 4. Each Contractor will conduct a pre-job conference with the appropriate representative of the Council and Unions prior to commencing work. The Project Contractor and the Owner will be advised in advance of all such conferences and may participate if they wish.

ARTICLE XI

SUBCONTRACTING

The Project Contractor agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

ARTICLE XII

EQUITY PLAN

Section 1. The Contractors and the Unions agree to promote the involvement of minorities, women, and veterans in the construction of the Project, in accordance with the Equity Plan adopted by the Owner.

Section 2. The Unions and Contractors acknowledge all goals, requirements, and other details of the Equity Plan and are mutually committed to successful achievement of the Plan including assisting women, minorities, and veterans to develop life-long careers and also to increase the community's capacity to provide the appropriate workforce for future projects.

Section 3. Specifically, the Unions and Contractors collectively and each Union and Contractor individually recognize the Workforce Goals established within the Equity Plan for the Project (32% minority, 6% female) and agree, in mutual cooperation, to take all necessary and reasonable good faith efforts to support accomplishment of these goals (such measures shall include evidence of all good faith efforts undertaken by both Contractors and Unions to increase minority and female participation in the Project).

Section 4. Appendix E of the Project Equity Plan identifies certain minimum requirements for Good Faith Efforts to be exercised by Contractors. Unions agree to fully support these Good Faith Efforts.

ARTICLE XIII

SAVINGS AND SEPARABILITY

It is not the intention of Project Contractor, Contractors, or the Unions to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Project Contractor and Unions agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by a Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of the applicable law and the intent of the parties.

ARTICLE XIV

DURATION OF THE AGREEMENT

This Project Agreement shall be effective on November 22, 2013 and shall continue in full force and effect for the duration of the Project construction work as described and defined in Articles I and II of this Agreement.

The applicable provisions of the CBAs included in Schedule A of this Project Agreement shall continue in full force and effect unless and until the Contractor and/or Union parties to said CBAs notify the Project Contractor in writing of any mutually agreed upon changes to those provisions and their effective date(s), which shall become the effective date(s) for purposes of applying said provisions under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the day and year above written.

**FOR THE MINNEAPOLIS BUILDING AND
CONSTRUCTION TRADES COUNCIL**

By: 

Dan McConnell, Business Manager

Dated: 11/22/2013

**FOR M.A. MORTENSON COMPANY,
PROJECT CONTRACTOR**

By: 

Kendall Griffith, Vice President

Dated: 11.22.13

SCHEDULE A

LOCAL COLLECTIVE BARGAINING AGREEMENTS

The applicable Local Collective Bargaining Agreements (“CBAs”) for the Building Trades Unions affiliated with the Council are incorporated herein by reference. For copies of the applicable CBAs, contact the Local Unions directly or the:

Minneapolis Building and Construction Trades Council
312 Central Avenue, Suite 556
Minneapolis, MN 55414
Phone: (612) 379-4234 Fax: (612) 379-4479
E-mail: dee@mplsbuildingtrades.org

SCHEDULE B

Boilermakers Local 647

Bricklayers Local 1

Carpenters Local 322 and North Central States Regional Council of Carpenters

Cement Masons Local 633

City Employees Local 363 and Laborers District Council of Minnesota and North Dakota

Laborers Local 563 and Laborers District Council of Minnesota and North Dakota

IBEW Local 292

Elevator Constructors Local 9

Glaziers Local 1324 and Painters District Council 82

Heat and Frost Insulators Local 34

Iron Workers Local 512

Iron Workers Local 535

Millwrights Local 548 and North Central States Regional Council of Carpenters

MN Interior Systems Local 68 and North Central States Regional Council of Carpenters

Operating Engineers Local 49

Painters Local 386 and Painters District Council 82

Pile Drivers Local 1847 and North Central States Regional Council of Carpenters

Pipefitters Local 539

Plasterers Local 265

Plumbers Local 15

Roofers Local 96

Sheet Metal Workers Local 10

Sign and Display Local 880 and Painters District Council 82

Sprinklerfitters Local 417

ATTACHMENT A

LETTER OF ASSENT

_____ hereby agrees to accept and be bound by the terms and conditions of the Project Labor Agreement between M.A. MORTENSON COMPANY and the MINNEAPOLIS BUILDING AND CONSTRUCTION TRADES COUNCIL, dated and effective _____, for MINNESOTA MULTI-PURPOSE STADIUM with respect to all construction work at the site of the construction and during the course of the construction as those terms are used or defined in the Project Labor Agreement.

By: _____

Its: _____

Dated: _____

ATTACHMENT B

EXCLUSIONS

Items specifically excluded from the scope of this Agreement include:

1. Work performed by executives, field engineers, office engineers, designers, inspectors, quality control personnel, draft persons, superintendents, time keepers, messengers, office workers, guards, emergency medical and first aid technicians and other administrative or professional employees;
2. Laboratory testing, specialty testing, and inspections not ordinarily performed by construction craft personnel represented by the Unions;
3. Surveying and other elevation control work;
4. Work performed by individuals commissioned as artisans for sculptures, paintings, murals, or similar works of art;
5. Work performed pursuant to contracts with the City of Minneapolis, Hennepin County, or similar governmental entity (other than the Minnesota Sports Facilities Authority) for infrastructure work, whether or not the work is required as a result of the Project;
6. Work performed by or under a contract with public utility companies to provide utility work for this Project, whether or not this work is on the Stadium Site;
7. Weekly cleaning of the Project Contractor's and other Contractor's management office trailers;
8. Work performed under existing contracts, annually-renewed contracts, or contracts for emergency work associated with ongoing operation, maintenance, and repair of the Metrodome prior to commencement of the demolition phase of the Project;
9. Certain features of the scoreboards, lighting, telephone video equipment, sound equipment, fire alarms, security systems, and fiber optic and connectivity systems may require persons trained by the manufacturer for proper and warranted assembly, start-up, testing, and programming of this equipment; all such assembly, start-up, testing, and programming work is excluded from the PLA to the extent that persons trained by the manufacturer are necessary to perform the work and construction craft personnel represented by the Unions are not qualified to perform the work.

**EXHIBIT 7
WARRANTY**

The following Warranty is included in this Trade Contract Agreement as **Exhibit 7**:

WARRANTY

Pursuant to the Trade Contract Agreement between the Minnesota Sports Facilities Authority (“**Authority**”) and _____ (“**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 (“**Warranty**”). 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 three (3) years after final acceptance by Authority. Where guarantees or warranties are required in the Trade Contract Documents for a period of more than three (3) 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:

WITNESS: _____

Title: _____

Date: _____

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 _____, 2015.

NOTARY PUBLIC

SEAL

MY TERM EXPIRES

EXHIBIT 8
FORM OF MAINTENANCE AGREEMENT

Not applicable.

EXHIBIT B

NON-COLLUSION STATEMENT

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

STATE OF _____
CITY/COUNTY OF _____

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

Title of Person Signing

of _____

Name of Proposer

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

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

Proposer _____

By _____

Its _____

SWORN to before me this _____ day of _____ 20 ____.

Notary Public

My Commission Expires

EXHIBIT C

State Of Minnesota – Affirmative Action Data Page (For responses in excess of \$100,000 only)

If your response to this solicitation is in excess of \$100,000, please complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363.073) certification requirement, and to provide documentation of compliance if necessary. *It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract.*

How to determine which boxes to complete on this form:

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

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX D.** Include a copy of your certificate with your response.
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date) at _____ (time). [If you do not know when the Department received your Plan, contact the Department.] We acknowledge that the plan must be approved by the MDHR before any contract or agreement can be executed. **Proceed to BOX D.**

- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. *We acknowledge that our response will be rejected.* **Proceed to BOX D. Call the Minnesota Department of Human Rights for assistance.**

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

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

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

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

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

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

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

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

BOX D – For all companies

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder.

Name	_____	of	_____	Company:
Authorized	_____			Signature:
Printed	_____			Name:
Title:	_____			

Date:	_____	Telephone	_____	number:

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

Minnesota Department of Human Rights, Compliance Services Section	
Mail: 190 East 5 th Street, Suite 700	Metro: (651) 296-5663
St. Paul, MN 55101	Toll Free: 800-657-3704
Website: www.humanrights.state.mn.us	Fax: (651) 296-9042
Email: employerinfo@therightsplace.net	TTY: (651) 296-1283

EXHIBIT D

The Equity Plan for professional and technical services has three areas that will continue to be monitored, throughout the contract; targeted business inclusion, diverse workforce inclusion and transparent/regular reporting.

Targeted Business Inclusion

The MSFA will expect that the contractor will include Minority and Women Business Enterprises (MWBE's) to perform part of the contractor's work. There are arrays of resources that have been prepared to assist the contractor in identifying targeted businesses. In the event that the contractor cannot identify either minority or women businesses, we offer the opportunity to pursue veteran owned small businesses as an option. In addition to locating and contracting with targeted MWBE businesses, we anticipate that the contractor will offer targeted businesses an opportunity to get mentored through this contract. A mentor/protegé option will show that the contractor is serious about developing small businesses in an area where larger companies have dominated the market.

Diverse Workforce Inclusion

There are no workforce inclusion goals on professional and technical services; however, the MSFA expect that the contractor will make every effort to recruit a labor force that is ethnically and gender diverse. Recruiting workers from local small and disadvantaged businesses is an opportunity to develop those businesses as well as educating its workforce on the unique opportunities the professional / technical scopes of work offer.

Transparent Reporting

The building of this Project has a phenomenal track record of equity inclusion in both business and workforce. We expect the same in every facet of the Project. The contractors are expected to initially report its targeted business expectations through an exhibit to its contract. Next we expect the contractor to regularly report to the MSFA is monthly spending activity. The documents that the contractors should use to report this information are attached.

- 1) Attachment A: Who will the contractor award work to and at what price and percentage of total contract?
- 2) Attachment B: Who did the contractor solicit work from and why they chose to use or not to use that targeted business? This is the clarification data necessary to identify your Good Faith Effort(s).

Additionally, Minnesota Statute 337.10 requires prime contractors and all subcontractors on building and construction contracts to promptly pay their subcontractors, service providers and material suppliers within ten (10) days of their receipt of payment. Moreover, MSFA requires that you report on the monthly progress payments made to all your sub consultants.

Attachment A

Minnesota Sports Facilities Authority
 900 South 5th Street, Minneapolis, MN 55415



CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN TARGETED BUSINESS COMMITMENT AND INFORMATION FORM

Proposer Company Name: _____

Check ONE of the following:

- No Targeted Business participation is committed on this project
 The following Targeted Business (MBE & WBE) participation is committed on this project:

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

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



CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM

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

(Check ONE of the following)

- No Targeted Business (MBE or WBE) participation is committed on this project.
- Proposer is committed to use the Targeted Business contractor(s) listed in this form on this project at the stated percentage(s).

I further certify that I have read the Targeted Business requirements found in the Construction Services Agreement Equity Plan. I am authorized on behalf of the Proposer to submit this certification to the Minnesota Sports Facilities Authority.

This certification is a material representation of fact on which the Authority may rely in awarding the contract.

Proposer Name: _____

By: _____

Date: _____

Name: _____

Title: _____

Attachment B

Minnesota Sports Facilities Authority
900 South 5th Street, Minneapolis, MN 55415



**CONSTRUCTION SERVICES AGREEMENT EQUITY PLAN
TARGETED BUSINESS INFORMATION FORM**

Check ONE of the following:

- No Targeted Business will be used by Proposer on this project.
- Targeted Businesses are proposed to be used on this project.

The following is

- 1) a list of Targeted Businesses proposed to be used on the project AND
- 2) a list of Targeted Businesses who were considered by the Proposer for the project but were not selected by the Proposer:

1) TARGETED BUSINESS PROPOSED TO BE USED ON THE PROJECT:

Firm Name	Address	Telephone Number

2) TARGETED BUSINESS WHO WERE CONSIDERED BUT WERE NOT SELECTED:

Firm Name	Address	Telephone Number

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



CERTIFICATION

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

Proposer
Name: _____

By: _____ Date: _____

Name: _____

Title: _____

END OF DOCUMENT

EXHIBIT E
CONSTRUCTION DOCUMENTS
ELECTRICAL POWER PLANS

EXHIBIT F
SUBMITTAL 262726-PD001
ELECTRICAL WIRING DEVICES

EXHIBIT G
SPECIFICATION SECTION 114000
FOOD SERVICE EQUIPMENT
DATED 1/30/15