



**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.

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**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.

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## **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.



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### **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.

DRAFT