



WHEREAS, the Authority and Contractor desire to enter into this Professional Services Agreement (“Agreement”)

NOW THEREFORE, in consideration of the foregoing recitals, which are an integral part of this and hereby expressly incorporated by reference in Agreement, the following terms and conditions, and other and further consideration, receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows.

**1. Defined Terms:** As used in this Agreement, the following terms have the following meanings:

“Applicable Laws” means all applicable federal, state, and local laws, ordinances, rules, and regulations that apply to any and all services provided by the Contractor pursuant to this Agreement.

“Application for Payment” means the submittal of a request for payment on the Authority’s form and in conformity with the guidelines for receiving payment under this Agreement.

“Authority” means the Minnesota Sports Facilities Authority established pursuant to 2012 Minnesota Laws, Chapter 299 (the “Act”).

“Contractor” means [insert]

“Project” means the new Stadium and stadium infrastructure described by the Act.

“Required Services” means all of the obligations undertaken by Contractor in this Agreement and its exhibits, including, but not limited to the services identified in Section 2, Scope of Service and Section 4, Contractor’s Duties.

“Stadium” means the stadium suitable for professional football to be designed, constructed, and financed under the Act.

“Standard of Care” means the standard of professional care, skill, diligence and quality that prevails among similarly situated professionals on facilities of similar scope, function, size, quality, complexity and detail as the Project in comparable urban areas throughout the United States, and further including performance in accordance with all Applicable Laws.

“Team” means Minnesota Vikings Football, LLC, a Delaware limited liability company authorized and doing business in the State of Minnesota.

**2. Scope of Services:** Contractor shall timely perform the Required Services for the Authority pursuant to the terms of the Agreement and the Standard of Care to the satisfaction of the Authority. Contractor shall only allow competent, trained employees to perform the Required Services, and Contractor shall adequately supervise its employees to perform the Required Services on its behalf. All such employees shall be

properly licensed and/or certified, if required by Applicable Law, for the work they are to perform. The Contractor accepts a fiduciary duty of trust and confidence toward the Authority created by this Agreement, and covenants with the Authority to furnish the Contractor's skill and judgment in furthering the interests of the Authority consistent with Contractor's Standard of Care. The Contractor shall use its expertise and efforts to perform the Required Services in an expeditious and economical manner and in furtherance of the interests of the Authority. The Required Services shall include:

2.1 Assist and consult with the Authority in identifying available appropriately qualified, experienced, and skilled minorities, women, and veterans as candidates for potential employment by the Project contractors and subcontractors of all tiers involved in the construction of the Project including, without limitation, researching, identifying, and facilitating the training of available and appropriately skilled minorities and women in applicable local trade unions and project subcontractors.

2.2 Organizing, advertising and holding additional job fairs shall be additional services that are not part of the scope of this Agreement unless approved by the Authority in writing as an addition to this Agreement, which additional services will be compensated at a rate to be negotiated at the time the services may be requested.

**3. Term of the Agreement:**

3.1 Effective date: \_\_\_\_\_. The Contractor must not begin work under this Agreement until this Agreement is fully executed and the Contractor has been notified by the Authority to begin the work.

3.2 Expiration date: \_\_\_\_\_, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

3.3 Survival of Terms. The following sections survive the expiration or termination of this Agreement: 10. Insurance; 12. Audits; 13. Intellectual Property and Government Data Practices; 15. Publicity and Endorsement; 17 Contractor's Records and Data Safeguarding; and 18. Governing Law and Dispute Resolution.

**4. Contractor's Duties:**

4.1 The Contractor, who is not an employee of the Authority, Team, or Indemnitees, will perform all Required Services in a timely manner in full accordance with the Contractor's Standard of Care.

4.2 Consistent and in full compliance with its Standard of Care, the Contractor shall use its expertise to perform the Required Services in an expeditious and economical manner and in furtherance of the interests of the Authority.

4.3 Contractor warrants that it now has all personnel required to perform the Required Services. Contractor's principal-in-charge for this Agreement shall be \_\_\_\_\_, and that she/he shall materially participate in the performance of the Required Services.

**5. Time:**

5.1 The Contractor shall adhere to, and timely perform the Required Services in accordance with, the Schedule set forth in **Exhibit 2** ("Schedule"), as may be modified in writing from time to time by the Authority in its sole discretion. In the performance of this Agreement, time is of the essence.

**6. Consideration and Payment:**

6.1 The Authority will pay for all services performed by the Contractor under this Agreement as follows:

6.1.1 Compensation. The Contractor will be paid on the following basis:

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

6.1.2 Total Obligation. Notwithstanding any term in this Agreement to the contrary, the total obligation of the Authority for all compensation and reimbursements to the Contractor (inclusive of any applicable taxes) under this Agreement will not exceed \_\_\_\_\_ and \_\_\_/100 dollars (\$\_\_\_\_\_).

6.2 Prior to being entitled to receive payments, the Contractor shall submit to the Authority or its designee itemized Applications for Payment in a format to be approved by the Authority in its sole discretion, supported by such data as the Authority may deem reasonably necessary to substantiate the Contractor's right to payment. The Contractor shall submit an Application for Payment only during the last five (5) business days of any month. Applications for Payment submitted at any other time during the month will be deemed to have been submitted on the last day of that month. The Authority or its designee shall approve or reject all or part of Contractor's Application for Payment on or before the fifteenth (15<sup>th</sup>) day of the following month.

6.3 Such amounts as the Authority may approve, consistent with the terms hereof, shall be payable to Contractor not later than the last business day of the month following the month in which the Application for Payment is approved by the Authority and payment is made to any applicable disbursing agent by the Authority.

6.4 Contractor shall maintain an accounting system which accounts for costs in accordance with generally accepted accounting principles.

**7. Conditions of Payment:**

7.1 All services provided by the Contractor under this Agreement must be performed to the Authority's satisfaction and in accordance with all Applicable Laws. The Contractor will not receive payment for work found by the Authority to be unsatisfactory or performed in violation of Applicable Laws.

**8. Assignment, Amendments, Waiver, and Complete and Integrated Agreement:**

8.1 Assignment. The Contractor may neither assign, subcontract, nor transfer any rights or obligations under this Agreement without the prior consent of the Authority and a fully executed assignment or subcontract agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office. Any attempted assignment without said consent shall be void and of no effect.

8.2 Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

8.3 Waiver. If the Authority fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it. No waiver shall be effective against the Authority unless in writing specifically expressing such waiver signed by a person duly authorized by the Authority in advance to sign such waiver.

8.4 Complete and Integrated Agreement. This Agreement contains all negotiations and agreements between the Authority and the Contractor. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**9. Indemnification:**

9.1 Contractor shall defend, indemnify, save, and hold harmless the Authority, the Team, and their officials, board members, directors, officers, shareholders, members, owners, agents, affiliates, subsidiaries, lenders, assigns, heirs, estates, attorneys, and employees of any of them, and others acting on behalf of the Authority and Team (each an "Indemnitee" and collectively the "Indemnitees") from and against any claims, damages, liabilities, losses, causes of action, judgments, costs and expenses (specifically including attorneys' fees and costs, court fees and costs, and arbitration fees and costs incurred to defend an Indemnitee) arising from or alleged to have arisen from the negligent or wrongful acts, errors or omissions of the Contractor or the Contractor's agents, employees, subcontractors or delegates, or the Contractor's breach of this Agreement, and the Contractor's liability shall not be limited by the amount or limits of insurance Contractor procures to insure its obligations under this Agreement including this Section 9.1.

- 9.2 Contractor acknowledges and agrees that it has an independent obligation under this Agreement to procure and maintain such insurance as will insure the Contractor's obligations in this Agreement, including Section 9.1, and further agrees that such insurance is commercially available.
- 9.3 Contractor's obligation to defend as set forth in Section 9.1 includes the obligation to provide and pay for attorneys to defend any Indemnitee entitled to indemnification under Section 9.1, which attorneys shall be selected by the Indemnitee entitled to indemnification.

10. **Insurance:**

10.1 Without limiting any liabilities or any other obligations, Contractor, at its own expense, shall provide and maintain for all Services performed pursuant to the Agreement or for the Authority and Indemnitees the minimum insurance coverage of the types and amounts listed below. Not later than one week prior to the Effective Date of this Agreement, the Contractor shall provide a Certificate of Insurance to the Authority and the Team evidencing such insurance coverage. Not later than one week prior to the Effective Date of this Agreement, the Contractor shall provide a Certificate of Insurance to the Authority and the Team evidencing such insurance coverage.

10.2 Commercial General Liability (CGL) and Excess Liability

10.2.1 Contractor shall maintain CGL and, if necessary, commercial excess liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. The Authority and Indemnitees shall be included as additional insureds under the CGL policy and under the commercial excess coverage, if any, for all matters arising out of Contractor's services provided under this Agreement.

10.2.2 CGL insurance shall be written on Insurance Services Office, Inc. (ISO) occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The Authority and Indemnitees shall be included as additional insureds under the CGL policy. The additional insured endorsement shall include both "ongoing operations" and liability arising from "your work/completed operations" (the equivalent of using ISO additional insured endorsement CG 20 10 10 01 and CG 20 37 10 01 (both are required) or a substitute providing equivalent coverage. Such insurance shall include, but not be limited to, coverages for bodily injury, property damage, personal and advertising injury, contractual liability (applying to this Agreement), independent contracts, and products-completed operations liability, and under any excess liability policy an endorsement CG 2037 or equivalent.

- 10.3.3 Contractor's insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority and/or Indemnitees. There shall be no endorsement or modification of the CGL policy to make it excess over other available insurance; alternatively, if the CGL policy states it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insureds.
- 10.4.4 There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability assumed under this Agreement.

### 10.3 Commercial or Business Automobile Liability and Excess Liability

- 10.3.1 Contractor shall maintain business/commercial automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned vehicles).
- 10.3.2 Coverage as required by this section shall be written on a standard ISO business auto, garage, truckers, or motor carrier policy form. Insurance coverage as required by this section shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. Contractor shall effect additional insured status for the Authority and Indemnitees under coverage required by this section using ISO endorsement CA 20 48 or an equivalent form.
- 10.3.3 Contractor waives all rights against the Authority and Indemnitees, their agents, directors, officers, members, employees, owners, and volunteers for recovery of damages to the extent such damages are covered by the business automobile liability or commercial excess liability insurance obtained by Contractor pursuant to this Agreement.

### 10.4 Workers' Compensation and Employer's Liability

- 10.4.1 Contractor shall maintain workers' compensation and employer's liability insurance.
- 10.4.2 The workers compensation coverage shall be in an amount no less than the applicable state's statutory requirements.

- 10.4.3 The commercial umbrella/or employer's liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- 10.4.4 Contractor waives all rights against the Authority and the Indemnites, and their employees, officers, directors and agents for recovery of damages to the extent these damages are covered by the workers' compensation and employer's liability or commercial umbrella liability insurance obtained by Contractor pursuant to this section 10.4. Contractor shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.
- 10.4.5 The Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered employees of the Authority or Indemnites. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the Authority's or the Indemnites' obligation or responsibility.
- 10.4.6 Umbrella or Excess Liability.
- 10.4.6.1 Umbrella or Excess Liability Insurance in the amount of at least \$10,000,000 Each Occurrence and, \$10,000,000 in Aggregate providing coverage excess of Professional Liability (Errors and Omissions Coverage), CGL, Employers Liability and Auto as required herein. Coverage shall be at least as broad as the underlying coverage, including but not limited to completed operations and contractual liability.
- 10.4.6.2 The Authority and the Indemnites shall be included as additional insureds under the Umbrella or Excess policies for CGL and Auto coverage for all matters arising out of Contractor's services provided under this Agreement.

## 10.5 Professional Liability (Errors and Omissions Coverage)

- 10.5.1 Contractor shall maintain Professional Liability (Errors and Omissions Coverage) and, if necessary, commercial excess liability insurance in the amount of at least \$2,000,000 per claim, \$2,000,000 aggregate covering Contractor's liability for negligent acts, errors or omissions in the performance of professional services under this Agreement. Contractor further agrees that it will, throughout the entire period of required coverage and for an additional period of five (5) years following its last act of

performance under this Agreement (a) provide the Authority and Team with all pertinent information that the Authority or Team may reasonably request to determine compliance with this section; and (b) continuously maintain the coverage.

10.6 Insurers and Policies. All policies of insurance required hereunder shall be issued by financially responsible insurers, and all such insurers must be acceptable to the Authority and Team. Such acceptance by the Authority and Team shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:X shall be conclusively deemed to be acceptable. In all other instances, the Authority and Team shall have 15 business days from the date of receipt of Contractor's evidence of insurance to advise Contractor in writing of any insurer that is not acceptable to the Authority or Team. If the Authority and Team do not respond in writing within such 15 day period, Contractor's insurer(s) shall be deemed to be acceptable to the Authority and Team.

10.7 Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to its property interests. Contractor hereby releases the Authority and the Indemnitees from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of the Authority, an Indemnitee, or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

#### 10.6 Evidence of Insurance

10.6.1 Contractor shall, prior to commencement of any services related to this Agreement, furnish the Authority and Team with Certificate(s) of Insurance executed by a duly authorized representative of respective insurer(s) showing compliance with the requirements set forth above. Such Certificate(s) of Insurance shall be presented not later than one week prior to the Effective Service Date of this Agreement. Contractor shall also provide copies of its insurance policies as requested by the Authority or Team.

10.6.2 All Certificates of Insurance shall provide for thirty (30) days written notice to Authority and Team prior to cancellation or material change of any insurance referred to therein.

10.6.3 The Description of Operations Section of Certificate of Insurance shall reference the individuals from the Authority who will be in charge of administration of the Agreement.

**11. Independent Contractors:**

11.1 All of Contractor's employees and agents furnishing services under this Agreement shall be deemed employees solely of Contractor and shall not be deemed for any purposes whatsoever employees or agents of, acting for or on behalf of the Authority or any Indemnitee. Contractor shall perform all services as an independent contractor and shall assume all its liabilities as such. No acts performed or representations, whether oral or written, made by Contractor with respect to third parties shall be binding on the Authority or any Indemnitee. Contractor will make all purchases in its own name and shall not attempt in any way to bind the Authority or any Indemnitee in its contractual agreements, whether written or oral. The relationship between Contractor and the Authority or any Indemnitee is that of independent contracting entities. Neither shall be construed to be the employee of any other.

11.2 Contractor and its subcontractors, agents and employees shall at all times be independent contractors and shall not, under any circumstances, be considered or hold themselves out to be agents or employees of the Authority or any Indemnitee. Contractor further agrees that no tax assessment or legal liability of Contractor or of its agents or employees shall become an obligation of the Authority or any Indemnitees by reason of this Agreement.

11.3 Contractor shall be fully responsible for the acts of its employees, subcontractors, and agents and shall take all reasonable precautions to prevent injury or loss and shall be responsible for all damage caused by Contractor or its employees, or agents. Further, Contractor assumes all liability arising out of proven dishonesty of its employees or subcontractors.

11.4 Contractor and all subcontractors shall strictly observe and comply with all Applicable Laws concerning hours of work, age, compensation, working conditions, payroll taxes and other conditions of employment. Contractor and all subcontractors shall pay wages at a rate not less than the prevailing wage rate as determined under the Minnesota Prevailing Wage Law, Minnesota Statutes, Section 177.42.

11.5 Contractor shall be fully responsible for the acts of its employees, subcontractors, and agents and shall take all reasonable precautions to prevent injury, harm or loss and shall be responsible for all damage caused by Contractor or its employees, subcontractors, or agents. Further, Contractor assumes all liability arising out of the proven dishonesty of its employees, subcontractors, or agents.

**12. Audits and Record Keeping:**

12.1 Audits During the Agreement's Term: Contractor agrees that the Authority and Team, or any of their duly authorized representatives, at any time during the term of the Agreement, shall have access to, and the right to audit and examine, with reasonable notice, any pertinent books, documents, papers, and records of

Contractor related to Contractor's charges and performance under this Agreement. The Contractor agrees to make such books, documents, papers and records available to the Authority or Team during normal business hours upon request. Contractor agrees to refund to the Authority any overpayment disclosed by such audit within thirty (30) days of notice by the Authority, and, in the event any such audit shall disclose an overpayment by the Authority of greater than 10% of the amount properly owed, the Contractor shall pay the cost of such audit.

12.2 Contractor's Duty to Maintain Records After the Agreement's Term: The Contractor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Authority or Team as appropriate, for a minimum of twelve (12) years from the end of the Agreement. The Contractor agrees to make such books, records, documents, procedures and practices available to the Authority or Team during normal business hours upon request.

13. **Intellectual Property and Government Data Practices:**

13.1 Intellectual Property Rights. The Authority owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this Agreement. "Works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Agreement. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Agreement. The Documents will be the exclusive property of the Authority and all such Documents must be immediately returned to the Authority by the Contractor upon completion or cancellation of this Agreement. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title, and interest it may have in the Works and the Documents to the Authority. The Contractor must, at the request of the Authority, execute all papers and perform all other acts necessary to transfer or record the Authority's ownership interest in the Works and Documents.

13.2 Obligations Regarding Intellectual Property and Minnesota Government Data Practices Act.

13.2.1 Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including

its employees and subcontractors, in the performance of this Agreement, the Contractor will immediately give the Authority written notice thereof, and must promptly furnish the Authority with complete information and/or disclosure thereon.

13.2.2 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the Authority, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. The Contractor will indemnify, defend, and hold harmless the Authority and the Indemnitees, at the Contractor's sole expense, from any action or claim brought against the Authority or an Indemnitee that is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor's or the Authority's opinion is likely to arise, the Contractor must, at the Authority's discretion, either procure for the Authority the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the Authority will be in addition to and not exclusive of other remedies provided by law.

13.3 Government Data Practices: Contractor acknowledges that any records received, maintained or controlled by the Authority are subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. Contractor shall cooperate with the Authority to respond to valid requests pursuant to the Data Practices Act.

14. **Equal Opportunity:**

14.1 The Contractor shall comply with all Applicable Laws and any special requirements regarding equal employment opportunity, including but not limited to the completing the Minnesota Affirmative Action Data Page referenced in **Exhibit 1**.

14.2 If the Contractor has had more than forty (40) full-time employees within the State of Minnesota on a single working day during the previous twelve (12) months, the Contractor must comply with the following Affirmative Action requirements for disabled workers:

14.2.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position

for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

**15. Publicity and Endorsement:**

15.1 Publicity. Any publicity regarding the subject matter of this Agreement must identify the Authority as the sponsoring agency and must not be released without prior written approval from the Authority and Team. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.

15.2 Endorsement. The Contractor must not claim that the Authority or Team endorses its products or services.

**16. Compliance with Laws:**

16.1 Contractor shall comply with all Applicable Laws and shall obtain and maintain all necessary licenses, registrations, certifications, and permits at its sole cost and expense. The Authority and Indemnitees shall have no responsibility for fines, penalties or sanctions incurred due to acts or omissions of Contractor, its employees, agents, or subcontractors.

**17. Contractor's Records and Data Safeguarding:**

17.1 The Authority and Team shall be permitted access to all of the Contractor's records, books, vouchers, correspondence, instructions, drawings, receipts, memoranda and similar materials relating to this Agreement. Contractor shall preserve all such material for a period of two years after final payment under this Agreement. The reports, data, information, documents, plans, computer models and specifications prepared by the Contractor pursuant to this Agreement shall become and remain the property of the Authority.

- 17.2 Contractor (including its respective officers, trustees, employees, agents, subcontractors, and assigns) shall keep confidential any and all information which is marked "Confidential" and obtained from the Authority or any Indemnitee concerning the assets, properties, business, services, clients, trade secrets, organizational structure, philosophy, objectives, financial plans and results, and other information relating to the other party (the "Confidential Information") and shall not use such information (including without limitation this Agreement) for any purpose other than the purposes contemplated under this Agreement. However, any such information may be disclosed to employees and agents of Contractor to the extent that such persons, in Contractor's considered judgment, need access to such information to enable Contractor to perform its obligations under this Agreement. This covenant shall survive the termination of this Agreement.
- 17.3 Contractor shall take all steps necessary to safeguard any data, files, reports, or other information from loss, destruction, erasure, or release to outside parties, including but not limited to any and all Confidential Information. All costs, expenses, or damages resulting from the loss of such data shall be borne by the Contractor when such loss or damage occurred through the negligence of the Contractor. Any personally identifiable information including personal contact information may not be used for any purpose other than servicing this Agreement. The Contractor may not make any disclosures of it to anyone other than the Authority or Team without providing notice to the Authority and Team and complying with applicable law.
- 17.4 Notwithstanding anything to the contrary in this **Section 17** or elsewhere in this Agreement, unless consented to by the Team, nothing in this Agreement shall be deemed to authorize the Contractor to provide the Authority or other persons or entities access to, and Contractor shall not disclose, confidential or proprietary data or information provided to the Contractor by the Team or its affiliates. Contractor shall be required to execute a separate agreement with the Team concerning the safeguarding of data or other information provided to the Consultant by the Team or its affiliates.

18. **Governing Law and Dispute Resolution:**

- 18.1 Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Notwithstanding anything in this Agreement to the contrary, the Authority does not waive any statutory limited immunity from municipal tort liability available to it under Minnesota Statutes, Chapter 466, or otherwise. Such statutory limited immunity shall apply whether an action, claim, demand or lawsuit is initiated by Contractor or any third party.
- 18.2 The Authority and Contractor agree that if a dispute of any nature arises out of this Agreement, they will first try to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules. If the dispute is not resolved by mediation, Contractor agrees that the Authority

shall have the sole and exclusive discretion to determine whether the dispute shall be litigated in the Minnesota State Courts in Hennepin County, Minnesota, to which Contractor hereby submits to jurisdiction and venue, or arbitrated pursuant to the Commercial Rules of the American Arbitration Association in effect as of the Effective Date of this Agreement. To the extent a dispute involves common questions of fact or law that involve third parties whose presence is necessary for complete relief, Contractor consents to the joinder in arbitration of such third parties by the Authority and/or the consolidation of one or more arbitration actions with such third parties as may be deemed necessary in the Authority's sole discretion.

19. **Termination:**

19.1 Termination by the Authority. The Authority may terminate this Agreement at any time, with or without cause, upon five (5) business days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services timely satisfactorily performed through the date of the notice of termination as Contractor's sole and exclusive remedy. In the event the Authority terminates for cause, and such termination is later determined to have been unjustified, then such termination shall be deemed to have been for convenience and the Contractor's remedies shall be limited to the sole and exclusive remedy specified in this **Section 19.1**. In no event shall the Authority be liable for lost anticipated profits or consequential damages.

19.2 Termination for Insufficient Funding. The Authority may immediately terminate this Agreement if it does not obtain funding; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Notice of termination must be in writing pursuant to **Section 20.1**. The Authority is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services timely and satisfactorily performed, and to the extent that funds are available, as the Contractor's sole and exclusive remedy. The Authority will not be assessed any penalty if the Agreement is terminated for lack of funding

20. **Notices:**

20.1 All notices, demands, consents or approvals required or permitted under this Agreement shall be in writing and shall be deemed effective (a) when personally delivered, (b) when sent by facsimile with receipt acknowledged, (c) one business day after being deposited with any nationally recognized overnight courier which routinely issues receipts, addressed to the party at the address stated below, or (d) three business days after being placed in the United States mails by certified mail, return receipt requested, postage prepaid, addressed to the party at the address stated below:

Authority at: Minnesota Sports Facilities Authority  
511 11<sup>th</sup> Avenue South, Suite 401  
Minneapolis, Minnesota 55415  
Attention: Ted Mondale, CEO/Executive Director  
Facsimile No. (612) 332- 8334

With copies to:

Dorsey & Whitney, LLP  
Suite 1500  
50 South Sixth Street  
Minneapolis, MN 55402-1498  
Attention: Jay R. Lindgren  
Facsimile No. 612-340-2868

Contractor at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile No. \_\_\_\_\_

or at such other place or places as either party may hereafter designate in writing.

**21. Independence of the Contractor and Authority:**

- 21.1 Contractor represents and warrants that no trustee, officer, employee, student or agent of the Authority or Team has been or will be employed, retained or paid a fee, or otherwise receive or will receive any personal compensation or consideration of any kind by or from Contractor's directors, officers, employees, or agents in connection with obtaining, arranging, negotiating, or performing this Agreement.
- 21.2 The Authority may provide Contractor with a statement of rules and regulations to be followed by Contractor and its employees and agents in the Project. Such rules and regulations may be amended from time to time by the Authority.
- 21.3 No person or persons other than those employed by Contractor shall have any financial or personal interest in Contractor's performance hereunder.
- 21.4 No person acting for or employed by the Authority or Team is now or will hereafter be directly or indirectly involved on behalf of Contractor in this Agreement, or in the service and work to which it relates, or in any portion of the profits thereof in any manner.

**22. Miscellaneous:**

- 22.1 The persons executing this Agreement on behalf of each party hereto warrant and represent that they have full power and authority to do so.
- 22.2 Section headings herein are inserted only for convenience of reference, and shall in no way define, limit, or prescribe the scope or extent of any provisions of this Agreement.
- 22.3 In the event of any conflict between this Agreement and anything contained in the Exhibits hereto, the provisions of this Agreement shall govern.
- 22.4 All covenants, agreements, indemnities, guarantees and warranties made by Contractor shall survive the expiration or termination of this Agreement.
- 22.5 If any term or provisions of this Agreement shall be held to be invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 22.6 The failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of the party thereafter to enforce each and every such provision.
- 22.7 Obligations pursuant hereto shall survive the completion of the services to be performed by it and the date of termination hereof.
- 22.8 The rights and remedies provided for in this Agreement are in addition to any other rights and remedies provided by law.
- 22.9 In the execution of the Agreement, the Contractor agrees, consistent with the policies of the Authority, not to discriminate on the grounds of race, color, sex, national origin or citizenship status, age, disability, or veteran status and to provide reasonable accommodations to qualified individuals with disabilities upon request.
- 22.10 This is a non-exclusive Agreement. The Authority may contract with more than one contractor for similar services provided during the term of this Agreement. Contractor acknowledges that entry into an Agreement to provide services to the Authority does not obligate the Authority to purchase products or services from Contractor any minimum number of occasions, or at all, during the Agreement term.
- 22.11 Contractor is free to contract for similar services with other parties while this Agreement is in force; provided, however that Contractor shall not contract with other parties whose interests would be in conflict with the Authority or Team without the Authority's and Team's prior written consent after full disclosure of the proposed contract by Contractor. Contractor represents that it has no conflicts of interest with respect to this Agreement.
- 22.12 Contractor shall insure that its employees and agents do not disturb the personal property of any tenant or any of the equipment or supplies belonging to or leased by the Project, Authority or Team. Contractor will establish procedures for security for its employees and agents.
- 22.13 If Contractor is given keys to a portion of the Project, Contractor shall be responsible for the cost of re-keying the Project due to any loss of keys provided to the Contractor.
- 22.14 Contractor hereby acknowledges and agrees that the Team and the Indemnitees are intended third-party beneficiaries of the provisions of this Agreement that reference same. Nothing contained in this Agreement shall be deemed to create any other third-party rights or obligations under this Agreement.

[THE REST OF THIS PAGE IS INTENTIONALLY BLANK.]

**IN WITNESS WHEREOF**, Authority and Contractor have executed this Agreement as of the date at the beginning of this Agreement.

**CONTRACTOR:**

\_\_\_\_\_

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

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

**MINNESOTA SPORTS FACILITIES AUTHORITY**

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

Name: Michele Kelm-Helgen  
\_\_\_\_\_

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

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

Name: Ted Mondale  
\_\_\_\_\_

Title: CEO/Executive Director  
\_\_\_\_\_

**EXHIBIT 1**

RFQ/RFP for Employment Assistance Firm dated October 23,  
2015

**EXHIBIT 2**

Schedule