



**MINNESOTA SPORTS FACILITIES AUTHORITY REGULAR MEETING AGENDA**

**Friday, March 10, 2017, 9:00 A.M.**

**U.S. Bank Stadium-Hyundai Club**

**401 Chicago Ave, Minneapolis, MN 55415**

1. CALL TO ORDER
2. ROLL CALL
3. ADOPTION OF AGENDA
4. APPROVAL OF AUTHORITY MEETING MINUTES  
-Regular Meeting, February 24, 2017
5. CHAIR'S REPORT
6. BUSINESS
  - a. Action Items
    - i. Operational Equity Plan
    - ii. MSFA Capital Reserves Procurement Procedures
    - iii. SMG Pre-Opening Budget
    - iv. Approve Amendment to Owners Representative Agreement
  - b. Report Items
    - i. Legislative Update
    - ii. CEO/Executive Director Update
    - iii. Statement of Audubon Minnesota Regarding Beginning of Study
7. PUBLIC COMMENTS
8. DISCUSSION
9. ANNOUNCE FUTURE MEETINGS – Friday, April 28, 2017, 9:00 A.M. – Board Meeting
10. ADJOURNMENT



**MINNESOTA SPORTS FACILITIES AUTHORITY REGULAR MEETING MINUTES**  
**Friday February 24, 2017, 11:00 A.M.**  
**U.S. Bank Stadium Hyundai Club**  
**401 Chicago Ave, Minneapolis, MN 55415**

1. **CALL TO ORDER**

Chair Kelm-Helgen called the meeting of the Minnesota Sports Facilities Authority to order at 11:03 AM.

2. **ROLL CALL**

Commissioners Present: Chair Kelm-Helgen, Commissioner Blatz, Commissioner McCarthy, Commissioner Sertich, and Commissioner Butts Williams.

3. **ADOPTION OF AGENDA**

Chair Kelm-Helgen presented the agenda. Commissioner Sertich moved approval of the agenda, seconded by Commissioner Butts Williams and approved unanimously – 5 YEAS, 0 NAYS

**APPROVED**

4. **APPROVAL OF AUTHORITY MEETING MINUTES**

Commissioner McCarthy moved approval of the December 16, 2016 Regular Meeting Minutes seconded by Commissioner Sertich and approved unanimously – 5 YEAS, 0 NAYS.

**APPROVED**

5. **CHAIR'S REPORT**

Chair Kelm-Helgen announced that the Home Remodeling Show took place from January 27-29 was successful, and over 23,000 people attended.

Monster Jam returned to U.S. Bank Stadium on February 11, 2017. It was the third Monster Jam event at U.S. Bank Stadium within the last 3 months. Super Cross was held on February 18, 2017. The two events attracted over 85,000 attendees.

It was announced that the Badass Dash will be coming back to U.S. Bank Stadium on Saturday June 3, 2017.

Chair Kelm-Helgen stated that starting February 24, 2017, there will be 120 high school and college teams that will be playing baseball in at U.S. Bank Stadium. Century College played the first baseball game, and the University of Minnesota will play 13 games between February 24-March 12.

Chair Kelm-Helgen made a statement to the public, as it was her last board meeting as Chair of the MSFA. She stated:



“I accepted this assignment four and a half years ago, and today, I again chair this board’s 76th public meeting. While this process has not always been easy, or perfect, and I take full responsibility for my mistakes, I believe we have overall, done good work in the public's interest. We delivered a fully functional, world-class stadium for the people of Minnesota on time, and on budget. This is truly an amazing facility! Today is my final meeting, but the important work of the Stadium Authority continues. I promise you, I am committed to working towards a smooth transition over the next few weeks, to help ensure its continued success.

I am convinced this transition will be successful, thanks to the exceptional staff, consultants, and board members of the Authority. Together, your knowledge and experience of the work that has gone on, and the challenges that are yet to come, will continue serve the public well; that continuity will be important. I welcome and thank our newest board member and soon-to-be Chair, Kathleen Blatz, for agreeing to take on this challenging and important role. I have worked with her this past week, and I am confident she will provide the excellent leadership needed to steady the ship, and keep the stadium operating at top performance.

Many people have committed years of work to make this stadium a reality, and a success for the people of Minnesota. I believe we all share the goal of doing whatever we can to continue that success. Many thanks to each of you, including our wonderful staff, consultants, the Minnesota Vikings, Mortenson Construction and HKS Architects for your years of support, partnership, and ongoing work on behalf of the stadium and the Minnesotans it serves. I know you will continue to do great work! It has been an honor to serve with all of you and I wish you the very best.”

6. **BUSINESS**

a. **Action Items**

i. **Plan Annual Appointment of Officers**

Commissioner McCarthy nominated Commissioner Sertich for Security/Treasurer, and nominated Commissioner Butts Williams as Vice-Chair. The board voted to elect said commissioners, and it was approved unanimously- 5 YEAS, 0 NAYS.

**APPROVED**

ii. **Appointment of Interim Executive Director**

Counsel Lindgren began by explaining the process of the nomination of the CEO/Executive Director: The Chair nominates the CEO/Executive Director, and the board needs to approve of the Chair’s nomination by a 4/5<sup>th</sup> vote. Chair Kelm-Helgen nominated Jim Farstad, who has worked as an MSFA consultant for the last few years. She stated that his current role is overseeing the IT infrastructure, and noted that he is an incredible manager. Chair Kelm-Helgen mentioned that Craig Skiem and Jay Lindgren will consult with Mr. Farstad through his interim term as the CEO/Executive Director.

*Chair Kelm-Helgen moved to make a motion, and Commissioner McCarthy seconded the motion, approved unanimously-5 YEAS, 0 NAYS.*

**APPROVED**



**DISCUSSION:**

Commissioner Blatz commented that she is appreciative of Mr. Farstad’s willingness to step up into this position and to assist with the transition.

The board then discussed the terms of Mr. Farstad’s appointment. The board agreed that he would be paid a fee commensurate to Mr. Mondale’s salary prorated to the time spent and length of service as Interim-Director. The board also agreed that the Chair would determine what hours Mr. Farstad would devote to the Executive Director responsibilities while fulfilling his IT contractual responsibilities and finalize the compensation based on the agreed upon proration.

**iii. Adoption of Equity of Plan for Capital Projects**

Pursuant Minnesota Statutes, Section 473J.12, the Authority instituted an equity plan to 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 during Stadium construction.

The Statute also requires that an equity plan be developed for capital repair, replacement and improvement of the Stadium. Authority staff has now prepared, and is requesting adoption of, the attached post-construction equity plan to support construction projects funded out of capital reserves.

**Recommendation:** *The Authority authorizes the adoption of a post-construction equity plan to support construction projects funded out of capital reserves. Commissioner McCarthy moved to approve the recommendation. Commissioner Butts Williams seconded the motion, approved unanimously-5 YEAS, 0 NAYS.*

**APPROVED**

**Discussion:**

Commissioner McCarthy inquired as to who is responsible to oversee the equity compliance plan., Counsel Lindgren stated that it is MSFA’s is responsibility. Should the MSFA want to assign an employee to oversee equity compliance, the CEO/Executive Director would have to appoint someone. The MSFA would also need to decide if there is still a need for Mr. Alex Tittle’s equity services. Mr. Tittle then provided an overview of the equity program. The MSFA strongly encouraged SMG and Aramark to utilize people of color, women, and veterans in their hiring practices. The MSFA is arranging an equity meeting, where it will recommend a quarterly update on equity numbers. Commissioner Blatz asked if Mr. Tittle would review the results with the CEO/Executive Director and would make recommendations to the MSFA. Mr. Tittle stated that recommendations would be made and that the results would be reviewed with the Executive Director.

The Equity Plan for Capital Projects is part of the Capital Improvement Plan Document located on the MSFA website. See “About/Capital Improvement Plan”.



**iv. Approve Verizon DAS Expansion License Agreement Amendment**

MSFA has entered into a DAS License with Verizon which provides for the design, implementation, and hosting of carrier neutral Distributed Antenna Services to support Cellular voice and data transmission throughout the U.S. Bank Stadium Site.

MSFA desires to execute an Amendment to the DAS License Agreement to allow Verizon to fund and implement enhancements to the DAS which will prepare U.S. Bank Stadium for the NFL Super Bowl and NCAA Final Four events. For the right to expand the capacity of the DAS network, Verizon will pay MSFA an additional \$40,000.00 per year, beginning January 1, 2018 and each subsequent anniversary for a period consistent with the term of the DAS License Agreement.

The staff is requesting authority to finalize and enter into an Amendment and to the DAS License Agreement, and to invoice for the initial expansion Payment.

*Recommendation: The Authority Board authorizes staff to finalize and enter into an Amendment to the DAS License Agreement and invoice for the initial expansion Payment. Commissioner Sertich moved to approve the recommendation. Commissioner Blatz seconded the motion, approved unanimously-5 YEAS, 0 NAYS.*

**APPROVED**

**v. Approve Amendments to Owners Representative Agreement**

The Owner’s Representative Agreement with Hammes Company Sports Development, Inc. (“Hammes”) expires on February 28, 2017. There is construction, project close-out tasks and financial tasks that will continue past the contract expiration date. Hammes has offered to continue their Owner’s Representative services at a reduced staffing level for the period from February 1, 2017 through March 31, 2017 on (1) an actual hourly fee basis and actual reimbursable expenses for February and (2) an amount not-to-exceed \$75,000.00, plus a fixed monthly reimbursed expense amount of \$8,975.00 for March. It is anticipated that Owner’s Representative Agreement with Hammes will need to be extended beyond March 31, 2017, and the tasks are still being defined for that anticipated extension, which will be recommended at the next meeting of the MSFA Commissioners.

*Recommendation: The MSFA authorizes the Chair and CEO/Executive Director to execute Amendments No. 4 and No. 5 to the Owner’s Representative Agreement with Hammes Company Sports Development, Inc. on an actual hourly fee basis for February and an hourly fee basis not-to-exceed \$75,000.00 (plus a fixed monthly reimbursed expense amount of \$8,975.00) for March. Commissioner McCarthy moved to approve the recommendation. Commissioner Butts Williams seconded the motion and approved unanimously, 5 YEAS and 0 NAYS..*

**APPROVED**

**Discussions:**

Commissioner Butts Williams inquired whether the \$75,000 was an additional payment to Hammes Company. Counsel Lindgren clarified that the amendment has two parts. The first part is for the month of February, and it is for the actual amount. For March, it is hourly amount, which is capped at \$75,000 plus \$8,975 for reimbursed expenses.



**vi. Approve Event Marketing Fund Budget**

On October 9, 2015 the Authority authorized the Chair and CEO/Executive Director to negotiate and execute a contract with Irwin Seating Company, Inc. for the purchase of 1924 seats for a contract amount of \$162,968.37 plus use tax of \$11,204.08, for a combined total of \$174,172.45.

Irwin Seating Company, Inc. has fabricated the seats and is ready to ship or store the seats.

An event marketing fund of \$500,000 was established in 2016 and is maintained by SMG per section 5.5(d) of the Management and Pre-Opening Services Agreement with SMG. The initial investment of \$500,000 was from the Manager's (SMG) Capital Investment. The Authority and SMG have agreed that the purchase of these seats is needed for the Super Bowl event that will be held in the stadium on February 2018 and that the seats should be an expense of the event marketing fund.

*Recommendation: The Authority approves an event marketing fund budget expense of \$174,173 for the purchase of the 1924 seats from Irwin Seating Company, Inc. Commissioner Sertich moved to approve the recommendation. Commissioner Butts Williams seconded the motion, and it was approved unanimously, 5 yeas and 0 nays.*

**APPROVED**

**Discussion:** Before giving the report on the Event Marketing Fund Budget, Ms. Mary Fox-Stroman expressed concern that the MSFA needs to pay bills before the end of the month, and was hoping that the new appointees (Commissioner Sertich and Commissioner Butts Williams) could begin their newly designated officer duties either March 8, 2017 or March 9, 2017, to ensure the MSFA's bills could be paid on time.

Counsel Lindgren advised that in order to have Commissioner Sertich and Commissioner Butts Williams terms begin on March 9, 2017, there would have to be a motion for approval. Chair Kelm-Helgen presented motion for approval to the board. *Commissioner Butts Williams moved to approve, Commissioner Blatz seconded the motion, and it was approved unanimously, 5 YEAS and 0 NAYS.*

**APPROVED**

**vii. Approve and Authorize Requests for Proposal for Government Relations Services and Public Relations Services**

MSFA is soliciting qualifications/proposals for a full service, governmental relations contractor to represent it with the Minnesota State Legislature, Executive Branch, City of Minneapolis, Hennepin County and other public bodies in connection with the funding of related public infrastructure, use, and operation of a multi-use stadium.

In addition, MSFA is soliciting qualifications/proposals for an individual or firm to provide public relations counsel and creative services contractor to support in proactive and crisis communications, responding to time sensitive issues, developing newsletters, public relations and local and community communications plans.

The staff is requesting authorization to issue a Request for Proposals for Government Relations Services, and Public Relations Counsel and Creative Services.



**Recommendation:** *The Authority authorizes the issuance of a Request for Proposal for Government Relations Services and Public Relations Services. Commissioner Sertich moved to approve the recommendation. Commissioner McCarthy seconded the motion; it was unanimously approved 5 YEAS and 0 NAYS.*

**APPROVED**

Discussion: Chair Kelm-Helgen suggested to the board the RFP issues could be bifurcated. She mentioned that it may be a good idea to wait to post the RFP until after the legislative season is over, and she would like board approval to do so.

Commissioner Blatz inquired as to whether the current contract with the MSFA's Government Relations Services had expired. Chair Kelm-Helgen replied that the contract ends at the end of February. Commissioner Blatz suggested to the board that it to extend the Government Relations Services contract until the end of session, and then put out an RFP. *After Further discussion, Commissioner Sertich made the motion to extend the government relations contract through June 1, 2017 and release an RFP that would go out on May 1, 2017. Commissioner McCarthy seconded the motion, and it was approved unanimously 5 YEAS and 0 NAYS.*

**APPROVED**

Further Discussion:

Chair Kelm-Helgen then went on to discuss the second part of the action item relating to the Public Relations Services RFP. Commissioner Blatz she would like to do an evaluation to determine the need for an outside PR firm to help the MSFA. CEO/Executive Director Farstad stated that the MSFA is not obligated to enter into any contracts but that the MSFA can put out an RFP for the services, and that it is a matter of choice if it decides to use an outside firm or not. Commissioner Butts Williams believes that the MSFA should wait on presenting an RFP, and that the MSFA could explore internal capabilities, instead of using an outside firm. The other commissioners agreed.

## **b. Report Items**

### **i. Summary of Legislative Auditor Recommendation**

The Office of the Legislative Auditor released its findings regarding the use of the MSFA owned suites on February 7, 2017.

Mr. Lindgren submitted to the commissioners the following memorandum summarizing the report:

Specific findings by the Auditor regarding the use of Authority Suites have been largely addressed by the revised suite use policy adopted by the Board on December 16, 2017. This policy sets up clear guidelines regarding the strict marketing purpose of the MSFA owned suites and requires detailed record keeping system. Mr. LingrenThe Auditor expressed concerns about two areas in the revised policy. First, the Auditor questioned whether it was sufficient for individual Commissioners and executive staff to make determinations of whether a marketing purpose is satisfied. Second, the Policy contains a list of proper attendees that may serve a marketing purpose and includes the phrase "Other." The Auditor also expressed concern over the category of "Other" guests being allowed in the policy.



In addition the Auditor recommended the following legislative steps:

- The Legislature should enact a law to control the Authority’s use of complimentary tickets to events at the U.S. Bank Stadium.
- The Legislature should consider enacting a law that would allow one or both of the Authority’s suites at the U.S. Bank Stadium to be used for nonprofit charitable purposes.
- The Legislature should exercise more oversight of the Authority.
- The Legislature should consider enactment of laws to control the use of complimentary tickets at all sports and entertainment facilities built with public money.

**Discussion:**

Commissioner Blatz inquired as to the legislative auditor’s satisfaction with the MSFA policy regarding future record keeping. Counsel Lindgren responded by saying that he is not entirely sure how the auditors feel about the new procedure, but believes that they are satisfied. Chair Kelm-Helgen commented by saying the MSFA has been keeping very detailed records of who has come into the suite, and doesn’t believe that any of the MSFA’s guests fell under the “other” category. There have only been a few events since the new policy went into effect, and she believes that these events will be reviewed by the auditors during their 2017 yearly audit. She also stated that the MSFA should show the new record keeping procedures to the auditors to get their feedback. Commissioner McCarthy asked if the MSFA should more clearly define the “other” category when keeping records in the future. Counsel Lindgren confirmed that the MSFA has not yet used the “other” category, but believes at some point in a later date, the MSFA should look into making that category more specific.

*Commissioner Blatz made a motion to amend the policy and delete the “other” category. Commissioner Butts Williams seconded the motion, and was approved unanimously 5 yeas and 0 nays.*

**APPROVED**

ii. Legislative Update Report-Memorandum Legislation Affecting Authority

Mr. Amos Briggs and Mr. Cullen Sheehan of Lockridge Grindal Nauen reviewed with the MSFA the status of pending legislation outlined herein:

[H.F. 778](#) / [S.F. 626](#): Minnesota Sports Facilities Authority data classification provided, board appointments modified, duties modified, and use of stadium suites restricted.

[House Research Summary, February 16, 2017](#)

- **House authors:** [Anderson, S.](#); Hoppe; Scott; Barr, R.; Knoblach; Nash; Fenton; Dettmer
- **Senate authors:** [Rosen](#); Kiffmeyer; Nelson
- **House committee action:** Passed Government Operations and Elections Policy, re-referred to State Government Finance. Passed State Government Finance, as amended, and re-referred to Ways and Means.
- **Senate committee action:** Introduced and referred to State Government Finance and Policy and Elections.





- **Status:** Met policy deadline in House, awaits action in Senate.  
[H.F. 291](#) / [S.F. 604](#): Convention center data classification clarified.

[Senate Counsel & Research Summary, February 15, 2017](#)

- **House authors:** [Scott](#); Anderson, S.; Pugh; Miller; Lucero; Howe; O'Neill
- **Senate authors:** [Limmer](#); Kiffmeyer; Rosen
- **House committee action:** Passed Civil Law and Data Practices Policy, re-referred to State Government Finance. Amended onto H.F. 778 (above) in State Government Finance.
- **Senate committee action:** Passed Judiciary and Public Safety Finance and Policy, as amended, and re-referred to State Government Finance and Policy and Elections.
- **Status:** Met policy deadline in House and Senate. Travelling within H.F. 778.

[H.F. 1211](#): Stadium suite disposal required.

- **House authors:** [Howe](#); Bahr, C.
- **House committee action:** Introduced and referred to Government Operations and Elections Policy.
- **Status:** Awaits committee action in House, no Senate companion introduced.

[S.F. 900](#): Super Bowl admissions sales tax exemption modification; Minnesota sports facilities commission operating and capital expenses sales tax reimbursement requirement.

- **Senate authors:** [Bakk](#); Tomassoni; Rosen; Senjem; Gazelka
- **Senate committee action:** Introduced and referred to Taxes.
- **Status:** Awaits committee action in Senate, no House companion introduced. Not subject to policy deadlines.

Discussion:

Commissioner Sertich inquired as to the status of the Legislative Commission on the Minnesota Sports Facilities Authority. Mr. Briggs of Lockridge, Grindal, Nauen responded by saying that he did not believe all of the committee members had been appointed yet, but would get back to the MSFA with updated information. Commissioner Blatz then asked Mr. Briggs about the repeal on the raffle. Chair Kelm-Helgen stated that the MSFA did a study of what a raffle would produce, and the study found that there would be little revenue to be recovered, and also outlined the difficulty of the raffle.

iii. Authority Response to Legislative Inquiry

Two letters, dated February 23, 2017, were received by the MSFA from Representative Kelly Fenton and Representative Sarah Anderson, respectively. The letters are attached. Representative Anderson inquired as to access issue which will be responded to after information is gathered. Representative Fenton inquired about delegations of contract signature authority that was granted in 2016 from the Board to the Chair and CEO/Executive Director ("Executive Director"). In response to Representative Fenton's inquiry, Mr. Lindgren prepared a memorandum to



provide background information to frame a discussion among the Board and guide preparation of a written response to the legislators.

Mr. Lindgren's memorandum to the MSFA Commissioners is set forth below:

Current Board-approved Policy:

The Board has a properly approved and adopted Procurement Policy (revised 12/13/2013). The Policy provides:

The CEO/Executive Director has purchasing power for the Authority. The CEO/Executive Director may make the following expenditures on behalf of the Authority pursuant to the CEO/Executive Director's duties without obtaining Authority approval prior to such expenditure:

CEO/Executive Director may approve contracts for goods and services up to \$250,000

The CEO/Executive Director may authorize a construction contract Project Change Order (PCO) from 10% up to \$500,000, whichever is greater, of original value per each PCO.

The CEO/Executive Director may authorize construction contract change orders up to \$250,000.

The Chair and the Executive Director each have the authority to give necessary approvals as required by the Construction Services Agreement for construction of the new stadium by Mortenson Construction. Delegations of signature authority to executive staff are a common and legally recognized tool for the management of political subdivisions. In my opinion, the amounts within the existing Procurement Policy are consistent with those granted by similar government entities to senior staff.

#### May through November Delegations of Signature Authority

Near the end of the Stadium project, the Board made additional delegations of authority to the Chair and Executive Director on a rolling, monthly basis to aid Project completion. Specifically, the Board approved an authorization for the Chair and Executive Director to negotiate and execute contracts at certain amounts until the time of the next regular monthly Board meeting. The specific delegations were:

- not to exceed \$2 million from the May Board meeting until the June Board meeting
- not to exceed \$2 million from the June Board meeting until the July Board meeting
- not to exceed \$2 million from the July Board meeting until the August board meeting
- not to exceed \$2 million from the August Board meeting until the September board meeting
- at the September Board meeting, this delegation was reduced to a maximum of \$1 million until the October Board meeting
- at the October Board meeting, this \$1 million delegation was extended until the November Board meeting

A detailed accounting is currently under review and additional information will be provided at the February 24 Board meeting.



Each of these delegations of authority to contract were publicly noticed and acted upon during open meetings of the Board. Copies of the Board memorandum for each authorization are attached. The minutes from each corresponding Board meeting are available on the Authority’s website.

This Delegated Authority Primarily Allowed Additional Vikings’ and Verizon Contributions

The primary purpose of these delegations of contract authority were for contract increases included in the Master Project Budget and/or for requests of the Minnesota Vikings to allow the Vikings to make additional financial contributions to the Stadium project and for additional investment Verizon for the cellular communications systems that benefit all attendees. Each of the financial contributions by the Vikings are detailed in the Development Agreement (or amendments thereto) which were discussed and voted upon by the Board in public meetings. The receipt of these private contributions are authorized in the Stadium Act (see Minnesota Statutes, Section 473J.09, subd. 7). As the construction came to a close and the Vikings prepared for their inaugural season, they chose to invest additional funds into the Stadium. These additions are referred to as “Privately Financed Enhancements” within the agreements between the Authority and the Vikings. In essence, this procedure allowed the Vikings to gift to the public additional contributions to the publicly-owned Stadium. This resulted in Stadium enhancement that benefit both the Vikings and the other public events held at the Stadium

Significant Board Limitation on Delegated Authority

Each temporary delegation of authority was limited by the Project Budget. The Project Budget can only be adopted by and approved by the Board. The Board made numerous adjustments to the Project Budget at its public meetings. None of these Project Budget amendments changed the amount of public funds that were spent on the Stadium. Rather, the amendments reflected private monetary contributions to the Stadium Project. All contracted amounts were either currently reflected in a Board-approved Project Budget or the result of direct financial contributions from the Vikings.

1. The May delegation of authority was for “contract amendments with Mortenson Construction, or other contractors.” At the request of the Vikings, this language was expanded to also apply to “other contracts” as long as the amounts contracted for were within the Project Budget or funded by the Vikings. The Vikings requested this change because they were concerned that some of their proposed Privately Financed Enhancements would require contracts with companies that did not fall within the scope of the language “other contractors.”

Discussion:

Commissioner Blatz inquired if the up to \$2,000,000 is aggregated. Counsel Lindgren responded by saying that the \$2,000,000 is the total for the 30-day period, and then it would be extended for another 30 days after that. The commissioners were informed that a response to legislators was being drafted based on the information provided by Mr. Lindgren and the MSFA records.

7. PUBLIC COMMENTS

1. Barbara Butts Williams:



Commissioner Butts Williams presented an award that she received on behalf of The Minnesota Sports Facilities Authority. The award was presented at a conference for the American Council of Engineering Companies (ACEC). The MSFA was awarded the “Grand Award” for innovative environmental and geotechnical engineering solutions for US Bank Stadium.

2. The following 7 people all presented to the MSFA their concerns about bird deaths incidental to the U.S. Bank Stadium:

Connie Pepin, Ann Laughlin, Stephen Greenfield, Jim Sharpsteen, Jerry Bahls, Wendy Haan, and Lisa Venable.

According to the presenters, during a 2016 informal study conducted at the stadium 60 birds were killed and 14 were observed as being stunned after colliding into the glass. The presenters requested the MSFA to take immediate action and implement bird-safe treatments to the stadium. Further, it was suggested that a study be done with more thorough and frequent monitoring.

3. Captain Jack Sparrow:

Mr. Sparrow requested that the word, “Vikings” in the name “Minnesota Vikings”, be changed to a name that does not glorify murder, rape, and slavery. He mentioned that we should not be honoring the Vikings at a time when the United States is at war with ISIS for committing these very same acts. He noted that football players are mentors to young children and young adults, and that the name “Vikings” does not show good morale for these kids. Mr. Sparrow compared the action of the Vikings, and related it to the ongoing issue of with the Minnesota Gopher’s Football Team. Lastly, he believes the team name has created a culture of violence in our community.

10. Bar Lau:

Ms. Lau stated that she wanted to end the meeting by stating that this has been a great team to work with, and that she would like to thank Chair Kelm-Helgen-the “captain”-, as she played an instrumental role in the building of the stadium. She commended on her long hours, and her professionalism. Ms. Lau gave her thanks to Chair Kelm-Helgen for believing in her throughout the project relating to the equity and inclusion goals, and appreciated her listening and believing in her. Ms. Lau stated that Chair Kelm-Helgen played a pivotal role in securing the Super Bowl, Final Four, and the X-Games, and she should be proud of all her successfulness. She concluded her comments by saying the public does not judge a football player based on one missed kick, one mistake, or one missed catch. She then thanked Chair Kelm-Helgen for all she has done in the past five years.

## 8. DISCUSSION

1. Bill McCarthy:

Commissioner McCarthy stated that working with Chair Kelm-Helgen the last 4 years has been an honor, and he has never worked with anyone who was so committed, dedicated, and hard working. He



mentioned that the public doesn't understand the complexity and magnitude of the pieces that needed to come together to build the stadium, and he thanked Chair Kelm-Helgen for serving the community, and noted that the public is indebted to her services.

2. Tony Sertich:

Commissioner Sertich thanked Ted Mondale for excellent leadership beginning at the Metrodome, as well as U.S. Bank Stadium and thanked Chair Kelm-Helgen on her dedication and hard work. He believes that she is hard working, tough as nails, and has a heart of gold, and he is proud of her leadership. He believes that it takes a person with special skills to bring everything and everyone together.

3. Barbara Butts Williams:

Commissioner Butts Williams stated that she wanted to personally thank Chair Kelm-Helgen for all her work the last five years. She said that a lot of things could not be done without her, and that she was the right person for the job. She appreciates her being steady, and she knows that the MSFA will do great work for the state of Minnesota as will Chair Kelm-Helgen in her future endeavors.

9. ANNOUNCE FUTURE MEETINGS

Friday, March 10, 2017, 9:00 A.M. – Board Meeting

10. ADJOURNMENT

There being no further business to come before the MSFA, Commissioner McCarthy moved to adjourn the meeting, seconded by Commissioner Butts Williams and approved unanimously – 5 YEAS, 0 NAYS.

**APPROVED**

**The meeting was adjourned at 1:20 pm.**

ADOPTED this 10th day of March 2017 by the Minnesota Sports Facilities Authority

\_\_\_\_\_  
Secretary/Treasurer, Tony Sertich

\_\_\_\_\_  
Jim Farstad, CEO/Executive Director



March 10, 2017

**MEMORANDUM**

TO: MSFA Commissioners

FROM: Alex Tittle

SUBJECT: Approve Operations Equity Plan

Pursuant to Minnesota Statutes, Section 473J.12, the Authority instituted an equity plan to make every effort to employ, and cause the NFL team, the construction manager and other subcontractors, vendor and concessionaires to employ women and members of minority communities when hiring during stadium construction. The Equity Plan for U. S. Bank Stadium Operations was developed based on the targeted assessment of stadium event activity. The current attached plan addresses the foundation of the data tracking and analysis needed to report on the inclusion efforts of a diverse labor force as well as Women, Minority and Veteran-Owned Businesses.

The key participants in the equity plan are the Stadium Concessionaire “Aramark” and Stadium Manager “SMG”. These parties are responsible for the regular equity-related data that will be communicated to the MSFA. The equity consultant “Diversity ACT, LLC”, is contracted to conduct the necessary auditing functions which will validate the labor and procurement data provided by Aramark and SMG. The MSFA has also contracted with an Employment Assistance Firm “EAF”. The EAF organizations will support the outreach and recruiting efforts for both the Stadium Concessionaire and Manager. The Equity Consultant will provide a quarterly report to the board for review and subsequently to the community for results and transparency purposes. These reports, which will be developed over the next season, will allow the MSFA to create a standard for a diverse and inclusive environment at the stadium.

The Statute also requires than an equity plan be developed for capital repair, replacement and improvement of the Stadium. Authority staff has now prepared, and is requesting adoption of, the attached Operations Equity Plan to support event operations.

**Recommendation:** *The Authority authorizes the adoption of an operations equity plan to support event operations at U. S. Bank Stadium.*



**MINNESOTA MULTI-PURPOSE STADIUM  
STADIUM OPERATIONS  
PRELIMINARY EQUITY PLAN**

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

- 1.1 **Introduction.** The State of Minnesota created the Minnesota Sports Facilities Authority (“Authority”) to build a state-of-the-art multipurpose facility now known as the U.S. Bank Stadium (“Stadium”). The Authority is required by law to promote the involvement of women and members of minority communities in the operation and management of the Stadium, as more completely described in Minn. Stat. § 473J.12. The Authority hereby adopts this Preliminary Equity Plan for on-going stadium operations. The purpose of this Preliminary Equity Plan is to formalize the Authority’s efforts to implement the Authority’s statutory mandate.
- 1.2 **Definitions.** For purposes of this Preliminary Equity Plan, the following definitions apply:
- (a) “Stadium Concessionaire” means any and all entities retained directly or indirectly by the Authority to manage food and beverage operations at the Stadium, as well as any entity providing food and beverage services at the Stadium (including not-for-profit businesses).
  - (b) “Stadium Manager” means the entity retained by the Authority to provide management and pre-opening services for the Stadium, as well as any entity providing management, operation, or pre-opening services for the Stadium (including not-for-profit businesses).
  - (c) “Employment Data” means information including the name of each employer and the name, Social Security Number, address, full-time or part-time status, hours worked, position/title, wage rate or salary, veteran status, race/ethnicity, and gender of each employee.
  - (d) “Procurement Data” means information regarding goods or services procured by the Authority for the operation of the



Stadium, including the amount of contract, purchase order, or other agreement; date of procurement; total purchase or expenditures; name of business; type of business, including NAICS code if applicable; and MBE/WBE status or certification.

- 1.3 Commitment to Equity. The Authority is committed to addressing any current or past racial or gender discrimination in the employment of women and members of minority communities in its operation and management of the Stadium. (This commitment includes a thorough investigation of whether an appropriate Equity Plan (similar to the Equity Plans for design and construction of the Stadium) should be implemented for operation and management of the Stadium.) Programs involving goals for employment of women and members of minority communities (a “Workforce” program) and goals for contracting with women-owned or minority-owned small businesses (a “Targeted Business” program) are being considered.
- 1.4 Lack of Information. The Authority has determined it lacks the legally required data necessary to support creation of an Equity Plan involving Workforce or Targeted Business programs and also lacks sufficient and necessary data to establish the goals for any such program.
- 1.5 Collection of Past and Present Data. The Authority will collect Employment Data and Procurement Data from the Authority’s predecessor, the Authority itself, the Stadium Manager and Stadium Concessionaire; and other relevant data.
- 1.6 Equity Consultant. The Authority intends to retain a qualified consultant to facilitate the efforts described in this Preliminary Equity Plan. This includes but is not limited to working with the Stadium Manager and Stadium Concessionaire regarding all employment and procurement practices, analyzing submitted reports, managing the data procurement system and facilitating regular meetings.
- 1.7 Reporting. The Authority shall provide quarterly reports to the public regarding the Authority’s implementation of this Preliminary Equity Plan, facilitated by the Equity Consultant, including summaries of the Employment Data and Procurement Data.

Section 2. **Current Efforts.**





- 2.1 The Authority recognizes the legislature’s mandate that the Authority make every effort to employ women and members of minority communities in the operations and management of the Stadium, as more completely described in Minn. Stat. § 473J.12. These efforts include:
- (a) The Authority entered into a contract with two firms, the Minneapolis Urban League and Summit Academy, which have created an employment assistance programs to recruit, hire, and retain minorities, women and veterans. These firms also will assist and consult with the Authority to identify, recruit, and train appropriately qualified, experienced, and skilled minorities, women and veterans as candidates for potential employment in the operation of the Stadium;
  - (b) The Authority, the Stadium Manager and Stadium Concessionaire have held and will continue to hold job fairs, recruit, and advertise at Minneapolis Urban League, Summit Academy OIC, Sabathani, American Indian OIC, Youthbuild organizations, and other such organizations;
  - (c) The Authority has created a database and associated software to register potential women-owned, minority-owned and veteran-owned small businesses contractors with the Authority and help the Authority ensure qualified targeted businesses contractors are aware of procurement opportunities; and
  - (d) Quarterly reporting. The Authority will host public quarterly meetings where the Stadium Manager, the Stadium Concessionaire, and a select group of their subcontractors will provide a report and/or update on the previous quarter’s procurement and employment status. In preparing that report, their data must be validated by the Authority or its designee.

Section 3.     **Workforce.**

- 3.1 In regard to Workforce, the Authority recognizes the legislature’s mandate that the Authority make every effort to employ women and members of minority communities in the operations and management of the Stadium, as more completely described in Minn. Stat. § 473J.12.



- 3.2 The Authority also recognizes that the legislature did not establish specific Workforce goals for employment of women and members of minority communities.
- 3.3 The Authority has investigated various means and methods of establishing appropriate Workforce goals for employment of women and members of minority communities and has determined that it presently lacks the required and sufficient data to create a specific, goal-based Workforce program or establish goals for any such program.

The Authority intends to gather all available Employment Data from the Authority's predecessor, the Authority, the Stadium Manager, and the Stadium Concessionaire as follows:

- (a) With respect to the Authority's predecessor, the Authority has gathered certain Employment Data and will continue to attempt to gather Employment Data from the predecessor's files.
  - (b) With respect to the Authority, the Authority shall provide Employment Data for all employees working at the Stadium. The Authority will also require the Stadium Manager and Stadium Concessionaire to provide quarterly Employment Data for all employees working at the Stadium.
- 3.4 The Authority intends to gather data as outlined above, report summaries of that data on a quarterly basis, and assess on a going-forward basis what additional efforts the Authority can take to achieve the legislative mandate.

**Section 4. Targeted Business.**

- 4.1 The Authority recognizes the legislature's mandate that the Authority make every effort to employ women and members of minority communities in the operations and management of the Stadium, as more completely described in Minn. Stat. § 473J.12.
- 4.2 In addition to the current efforts described above, the Authority will make every effort to broadly advertise requests for proposal and other solicitations to facilitate qualified women-owned, minority-owned and veteran-owned small business participation.



- 4.3 The Authority also recognizes that the legislature did not establish specific goals for contracting with Targeted Businesses such as women-owned or minority-owned small businesses.
- 4.4 The Authority has investigated various means and methods of establishing appropriate goals for contracting with women-owned or minority-owned small businesses and has determined that it presently lacks the required and sufficient data to support creation of a specific, goal-based Targeted Business program or establish goals for any such program.
- 4.5 The Authority intends to gather all available Procurement Data from the Authority's predecessor, the Authority, the Stadium Manager, and the Stadium Concessionaire as follows:
  - (a) With respect to the Authority's predecessor, the Authority has gathered certain Procurement Data and will continue to gather available Procurement Data from the predecessor's files.
  - (b) With respect to the Authority, the Authority shall provide Procurement Data from all vendors, contractors, and others working at or providing services to the Stadium. The Authority shall also require the Stadium Manager and Stadium Concessionaire to provide Procurement Employment Data for all employees working at or providing services to the Stadium.
- 4.6 The Authority intends to gather data as outlined above, report summaries of that data on a quarterly basis, and assess on a going-forward basis what additional efforts the Authority can take to achieve the legislative mandate.



March 10, 2017

**MEMORANDUM**

TO: MSFA Commissioners

FROM: James Farstad

SUBJECT: Adoption of Procedures for Planning and Procurement of Capital Enhancements included in the 2017 Stadium Capital Plan

The attached Procedures have been developed by staff to provide for an orderly process for annual approval by the Board of an annual Capital Funding Plan and for the efficient procurement of capital improvements authorized under an approved annual Capital Funding Plan. During construction of the Stadium, all capital expenditures were managed through a detailed process that was managed by the Authority's Owners representative. As the Authority closes out of the Project (Stadium construction and fit out), it is important to implement a detailed process for internal management of capital planning, budgeting and procurement to supplement and replace the Stadium Project management system. This system, provided by Hammes Company, the MSFA Project Owners Representative, will no longer be available to MSFA, after project close out.

In summary, these Procedures outline the following:

1. The schedule and process for proposed items to be included within Capital Funding Plan, with specific deadlines for staff, SMG, Aramark, and the Vikings before Board review in October or November of each year.
2. Detailed information on various procurement methods available for approved Capital items and request/approval forms for utilizing each procurement option.
3. Template documents for solicitation of bids/proposals and corresponding contracts.

**Recommendation:** *The Authority approves and adopts the Procedures for Planning and Procurement of Capital Enhancements dated March 10, 2017.*

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	<b>PAGE</b>
		March 10, 2017		Page 1 of 10

PURPOSE

The Board of the Minnesota Sports Facilities Authority (the “Board”) hereby establishes a set of procedures to be used for reviewing and approving the Capital Funding Plan and the resulting procurements for Capital Enhancements. These procedures provide greater detail than the existing Procurement Policy previously adopted by the Board. The procurement portion of the procedures set forth herein shall also be used for other, non-capital procurements. The Board anticipates that most of the work of capital planning and procurement shall be carried by its Executive Director (“Executive Director”), employees reporting to the Executive Director, and by a consultant or employee designated by the Executive Director to administer the procurement process (the “Contract Manager”). However, the Board will need to review and approve certain planning and procurement decisions and the Executive Director will need to approve the work of the Contract Manager at various stages. These procedures are meant to create an orderly process for the necessary reviews and approvals. All procurements must comply with applicable law and the Authority’s Procurement Policy, and the steps set forth in these procedures are meant to facilitate compliance with legal requirements and those set forth in the policy. Nothing in this set of procedures should be understood or interpreted so as to contravene the requirements of the Procurement Policy and applicable law. Defined terms have the same meanings as in the Procurement Policy, the Second Amended & Restated Stadium Use Agreement (the “Use Agreement”), and the Food and Beverage, Catering, and Concession Agreement (the “Concession Agreement”), as applicable.

PLANNING


Each November or December, the Board shall have on its agenda the review and approval of the Capital Budget for the following calendar year, the Food Service Capital Budget for the following calendar year, and the Long Term Capital Plan (collectively, the “Capital Funding Plan”). In preparation for those submissions, the staff of the Authority (the “Authority Staff”) and Executive Director shall consult with the Team each summer and obtain from it by September 30 of each year its list of those Capital Improvements for the next calendar year which it is designating for funding pursuant to the Use Agreement as well as any Capital Enhancements which it contends are NFL-Mandated Amenities. In addition, the Executive Director and the Authority Staff shall obtain from Aramark (the “Concessionaire”) its suggested budget for expenditures which it proposes to have charged against the Capital Replacement Fund pursuant to Section 7.1.2 of the Concession Agreement. The Executive Director and Authority Staff shall also forecast the amount the Concessionaire is likely to contribute to the food service Capital Reserve Fund during the next calendar year and determine the balance in the Capital Reserve Fund. The Executive Director and the Authority Staff shall also consult with SMG (the “Stadium Manager”) each summer and/or fall to determine what projects it believes should be included in the short and long-term capital planning.

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	<b>PAGE</b>
		March 10, 2017		Page <b>2</b> of <b>10</b>

Using the information obtained from the Team, the Stadium Manager, and the Concessionaire as well their own information and best judgment, the Executive Director and Authority Staff shall prepare a proposed Capital Budget for the following calendar year, proposed Food Service Capital Budget for the following calendar year, and a proposed Long Term Capital Plan. Preliminary drafts of the budgets and plan constituting the Capital Funding Plan shall be provided to the Team, the Stadium Manager, the Concessionaire, the Contract Manager, and such other persons as the Executive Director may designate by October 15 for review and comment. The Authority Staff shall thereafter make such edits, removals, and additions as the Executive Director deems appropriate. However, the Authority Staff and Executive Director shall not remove or alter the Capital Improvements for the next calendar year included pursuant to the direction provided by the Team in exercising its rights to direct certain Capital Improvements annually for the first five (5) years of the Use Agreement in accordance with the terms of the Use Agreement. At a minimum, the documents of the proposed Capital Funding Plan shall include a description of each proposed Capital Enhancement, an explanation of why the Capital Enhancement is needed or desired, the estimated cost for each item of work proposed, and a proposed timetable for completion of each item of proposed work.

In November or December at the designated meeting, the Executive Director shall present to the Board the budgets and plan constituting the proposed Capital Funding Plan for its review and approval. In addition to approving the Capital Funding Plan, with such additions, removals, and amendments as it shall make, the Board shall also specifically authorize or deny each individual proposed Capital Enhancement which is anticipated to be a Major Purchase scheduled to begin during the next calendar year.

The Executive Director shall present the Capital Enhancements submitted for individual approval using the attached Form A, and approvals of such projects should be recorded in minutes of the Authority’s meetings and also noted on Form A.

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>  March 10, 2017	<b>REVISED DATE</b>	<b>PAGE</b>  Page <b>3</b> of <b>10</b>

PROCUREMENT

**A. Micro Purchases**

Pursuant to Minn. Stat. §471.345, subd. 5, procurements valued at less than \$25,000 will be considered *Micro Purchases* and can be made either upon quotation or in the open market, in the discretion of the Executive Director. The Contract Manager shall present proposed capital project Micro Purchases to the Executive Director for approval using Form B.

The Contract Manager and Authority Staff will ensure that the price is fair and reasonable. Procurements will not be split to avoid competition.


If a contract is made upon quotation it shall be based, so far as practicable, on at least two quotations that shall be kept on file for a period of at least one year after their receipt. Alternatively, a contract for construction, alteration, repair, or maintenance work may be awarded to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. § 16C.28, subd. 1, para. (a), clause (2), and para. (c). The specific procedures for best value procurements are as set forth in the relevant section below.

**B. Small Purchases**

Pursuant to Minn. Stat. §471.345, subd.4 and 4a, procurements valued between \$25,000 and \$100,000 will be considered *Small Purchases* and will be made after obtaining two or more quotations, bids, or proposals from qualified sources. Small Purchases may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids. The Contract Manager and Executive Director shall be responsible for overseeing this process and ensuring it is carried out fairly and reasonably. The Contract Manager shall present proposed Small Purchases to the Executive Director for approval using Form B.

All quotations shall be kept on file for a period of at least one year after receipt thereof.

As an alternative to the procurement method described above, a *Small Purchase* for construction, alteration, repair, or maintenance work may be awarded to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. § 16C.28, subd. 1, para. (a), clause (2), and para. (c). The specific procedures for best value procurements are as set forth in the relevant section below.

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	<b>PAGE</b>
		March 10, 2017		Page 4 of 10

**C. Major Purchases**

Pursuant to Minn. Stat. §471.345, subd. 3 and 3a, procurements valued at greater than \$100,000 will be considered *Major Purchases* and will be made by either (1) publicly soliciting sealed bids in accordance with Authority procurement procedures and as required by Minnesota Statutes and Rules or (2) *Major Purchases* for construction, alteration, repair, or maintenance work may be made to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. § 16C.28, subd. 1, para. (a), clause (2), and para. (c). This second process is known as “best value procurement.” It is anticipated that best value procurement will be used for many of the capital project Major Purchases. The specific procedures for both best value procurements and the public solicitation of sealed bids are set forth below. *Major Purchases* shall be made through public solicitation of sealed bids unless the best value process is approved by the Executive Director through Form C.

**D. Best Value Contracting**

**1. Development and Approval of the RFP**


It is anticipated that best value contracting, as described in the Procurement Policy and Minn. Stat. § 16C.28, subd. 1, para. (a), clause (2), and para. (c), will be used for many of the Major Purchase Capital Enhancement projects. It may also be used for obtaining professional services as determined by the Executive Director.

Once a project has been approved for which best value procurement is appropriate and any design work or other necessary preliminary professional services have been completed, the Contract Manager shall develop a draft Request for Proposals (“RFP”). The draft RFP shall set forth the evaluation criteria that will be used to evaluate proposals along with the relative weight of price and other selection criteria. Each RFP shall also contain a draft contract for the Capital Enhancement. Templates for use in preparing the RFP and draft contracts are included in Exhibit A to this policy.

Pursuant to Minn. Stat, § 16C.28, subd. 1b, best value criteria may include, but are not limited to:

- (1) the quality of the vendor’s or contractor’s performance on previous projects;
- (2) the timeliness of the vendor’s or contractor’s performance on previous projects;
- (3) the level of customer satisfaction with the vendor’s or contractor’s performance on previous projects;



	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>  March 10, 2017	<b>REVISED DATE</b>	<b>PAGE</b>  Page 5 of 10

- (4) the vendor’s or contractor’s record of performing previous projects on budget and ability to minimize cost overruns;
- (5) the vendor’s or contractor’s ability to minimize change orders;
- (6) the vendor’s or contractor’s ability to prepare appropriate project plans;
- (7) the vendor’s or contractor’s technical capacities;
- (8) the individual qualifications of the vendor’s or contractor’s key personnel; or
- (9) the vendor’s or contractor’s ability to assess and minimize risks.

If changes are made to the criteria listed in Minn. Stat, § 16C.28, subd. 1b, the Authority will revise its Procurement Policy accordingly. Each best value procurement will require the services of a Technical Review Committee made to review proposals. The Contract Manager shall determine the persons he or she proposes to have serve as members of the Technical Review Committee.

The Contract Manager shall submit the draft RFP for a given project along with the names of the persons proposed as members of the Technical Review Committee to the Executive Director for review and approval. The submission shall be made using the attached Form C. The Executive Director, or a person designated by him or her, shall review the draft RFP and the proposed members of the Technical Review Committee and shall then either deny or approve the proposed solicitation. The Executive Director may choose to engage consultants to serve on Technical Review Committees. Any related procurements of professional services must be carried out pursuant to the Procurement Policy and applicable law. The Executive Director’s approvals or denials, and appointment of persons to Technical Review Committees shall be provided on attached Form C.

If a proposed RFP and/or proposed members of a Technical Review Committee are denied, the Contract Manager shall take account of the reasons provided by the Executive Director for such denial and shall revise and resubmit, if appropriate.

## 2. Solicitation and Review of Responses

Once an RFP has been approved, the Contract Manager shall solicit proposals from the marketplace by having the RFP posted on the Authority’s website and published in the State Register. In addition, the Contract Manager may also publish the RFP in additional sources, such as trade journals or industry websites, and/or he or she may directly contact vendors who may be interested in submitting proposals. All proposals which are received shall be evaluated as set forth in the RFP and as required by the Procurement Policy and applicable law.

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>  March 10, 2017	<b>REVISED DATE</b>	<b>PAGE</b>  Page 6 of 10

Once a Technical Review Committee has evaluated all proposals and determined through its scoring which proposal presents the best value, the Contract Manager shall carry out any necessary or appropriate final negotiations regarding contract terms with the proposer which provided the best value proposal.

If the Contract Manager determines after the solicitation process that the price offered by the best value proposer exceeds the budget for the project (or is likely to), then he or she shall notify the Executive Director who shall submit the matter for consideration by the Board at its next regularly scheduled meeting at which time the Board may direct the Executive Director to move forward with the Capital Enhancement after approving an additional funding source, cancel or postpone the Capital Enhancement, or reduce the scale of the Capital Enhancement. If the best value proposal for a Capital Improvement designated by the Team pursuant to the Use Agreement has come in over budget, the matter shall be brought to the Board to either cancel the procurement or approve an additional funding source. Any resolution that does not result in the project proceeding with an approved additional funding source will require the Contract Manager to cancel the solicitation and, if the project is still to move forward in some form, issue a new RFP following the procedures set forth above.

### **3. Contracting**


After completion of any contractual negotiation that followed the best value solicitation process, the Contract Manager shall present the proposed final contract for approval by the Board. If the Board approves the contract, said approval shall be noted in the meeting minutes and by the Board Chair on Form D. The contract for the project shall then be executed by the Executive Director and/or the Chair on behalf of the Authority consistent with the Procurement Policy.

#### **E. Sealed Bidding**

##### **1. Development and Approval of Notice**

All notices that the Authority is inviting competitive bids for Major Projects shall be published in both the State Register and on the Authority’s website. In addition, the Contract Manager may also publish in additional sources, such as trade journals or industry websites, and/or directly contact vendors who may be interested in bidding. Each notice of requests for competitive bids shall contain the following:

- A description of the project or purchase being sought.
- The availability and location of specifications.

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>		<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	<b>PAGE</b>
Procedures for Planning for and Procurement of Capital Enhancements		March 10, 2017		Page 7 of 10

- The specifications shall include the requirements for bid bonds, payment and performance bonds, and insurance.
- The specifications shall also include, or incorporate by reference, any and all requirements resulting from the Authority’s Equity Plan (discussed below).
- Bid requirements (including sealed bids, or any accompanying security).
- Where the bids must be submitted.
- The deadline for submitting bids.
- The time and place of the bid opening.
- Two or more persons who will be present for the opening who may be identified by job title or role.
- As applicable, a statement indicating that the Authority may delay the award until certain events occur.
- A statement indicating that the Authority may waive minor informalities or irregularities.
- A statement indicating that the Authority reserves the right to reject all bids submitted.

The Contract Manager shall prepare a proposed invitation for competitive bids, publication plan, and set of drawings and specifications for each Major Project which is being put out for competitive bidding. The specifications shall contain a proposed contract for the project. Templates for the proposed invitation for bids and the contracts are included in Exhibit A to this policy. The bid materials shall be submitted for approval by the Executive Director using Form E. The Executive Director, or a person designated by him or her, shall review the proposed notice, publication plan, and set of specifications and shall then either deny or approve the proposed solicitation.

If a proposed notice and/or proposed specifications are denied, the Contract Manager shall take account of the reasons provided by the Executive Director for such denial and shall revise and resubmit, if appropriate.

## 2. Opening and Tabulation of Bids

The Contract Manager shall bring all sealed bids to the MSFA’s offices and then open them at the time designated in the published notice in the presence of those persons indicated in the published notice, including the Executive Director or his or her designee. After the bids have been opened, the Contract Manager shall review the bids and investigate their compliance with the specifications, the prices quoted, their reasonableness, and the responsibility of the bidders. Determining whether a bidder is responsible includes considerations of financial responsibility,

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	<b>PAGE</b>
		March 10, 2017		Page <b>8</b> of <b>10</b>

integrity, skill, and the likelihood of performing faithful and satisfactory work, including the likelihood that a bidder will make a good faith effort to comply with the requirements of the Equity Plan discussed below. Promptness can also be considered in determining whether a bidder is responsible. The lowest responsible bidder’s bid must conform to the specifications and no material changes to the bids or specifications may be made once the bids have been opened.

Based on the results of his or her tabulation and investigation, the Contract Manager shall determine which bidder he or she believes provided the lowest responsible bid, and shall report the results of the tabulation and investigation at the next regularly scheduled Board meeting using Form F. If the lowest responsible bid exceeds the budgeted cost for a project, including a Capital Improvement designated by the Team pursuant to the Use Agreement, the matter shall be brought to the Board to either reject all bids or approve an additional funding source.


At the meeting during which the bids are considered, the Board may direct the Contract Manager and Executive Director to either move forward with the Project by contracting with the lowest responsible bidder or to reject all bids. The Board may reach its own conclusion regarding which bidder is the lowest responsible bidder as the question of whether a bidder is responsible requires some consideration of subjective factors. The Board’s decisions shall be recorded in the minutes and also provided on Form F by the Chair.

### **3. Contracting**

No material variations to a draft contract that benefit the bidder are allowed once the bids have been opened. Accordingly, further approval from the Board is not necessary once a lowest responsible bidder has been determined by the Board. The Contract Manager shall communicate with the lowest responsible bidder regarding any minor, non-material changes needed to finalize the contract, and shall then prepare the final contract for signature by the Executive Director and/or Chair on behalf of the Authority. The final contract shall be presented for execution using Form G. As noted on Form G, the Contract Manager shall provide a red-lined version comparing the version of the contract presented for execution and the version provided to bidders demonstrating that no material changes have been made.

#### **F. Joint Purchasing Agreements**

The Authority has the ability to enter into *Joint Purchasing Agreements* with other governmental units as provided for in Minn. Stat. § 471.59. Procurement's made through *Joint Purchasing*

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>  March 10, 2017	<b>REVISED DATE</b>	<b>PAGE</b>  Page 9 of 10

*Agreements* will satisfy the Authority's competitive procurement requirements, including those set forth above. Under such agreements, a governmental unit solicits bids and/or proposals and then enters into a contract with a vendor under which other parties to the joint purchasing agreement may order. The competitive process used by the other governmental unit to obtain the pricing and terms for the contract in question satisfies the competitive procurement requirements for micro, small, and even major purchases, but purchasing under a Joint Purchasing Agreement may not be allowed by law for certain types of procurements and the Contract Manager should consult with the Authority's legal counsel before beginning a Joint Purchasing Agreement procurement.

If the Purchasing Manager proposes that a major purchase of \$250,000 or less be made through a Joint Purchasing Agreement, rather than by having the Authority itself conducting a sealed bidding or best value process, then the proposed purchase shall be submitted to the Executive Director for approval using attached Form H. If the proposed purchase is going to exceed \$250,000, then it shall be presented to the Board for approval, also using Form H, and such approval shall be noted in the meeting minutes and by the Chair on Form H.

**G. Professional Services**

A competitive process is required when contracting for professional services for more than \$100,000 such as those provided by engineers, lawyers, architects, accountants, and other services requiring technical, scientific, or other professional training, unless otherwise determined by the Authority. Although it is not required by statute, the Executive Director may determine that the procedures set forth herein for best value procurements shall be followed when contracting for professional services in excess of \$100,000 for Capital Enhancements. Any Small Purchases or Micro Purchases of professional services shall be conducted using the procedures set forth above for those categories.

**H. Equity Plan**

Pursuant to Minn. Stat. § 473J.12, in the operation, maintenance, capital repair, replacement, and improvement of the stadium and stadium infrastructure the Authority is required to “make every effort to employ” and cause its vendors “to employ” women and members of minority communities. Accordingly, the Board has adopted an equity plan, a copy of which is attached hereto as Exhibit B and incorporated into these procedures. In carrying out the responsibilities set forth in these procedures, the Executive Director, the Contract Manager, Authority Staff, and

	<b>MINNESOTA SPORTS FACILITIES AUTHORITY</b>			
<b>SUBJECT:</b>  Procedures for Planning for and Procurement of Capital Enhancements		<b>EFFECTIVE DATE</b>	<b>REVISED DATE</b>	<b>PAGE</b>
		March 10, 2017		Page <b>10</b> of <b>10</b>

all employees, consultants or contractors of the Authority involved in procurement are to comply with the requirements of the Equity Plan.



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form A

Individual Capital Projects Requiring Board Approval

Project Title:

Project Description (attach other documents or pages as appropriate):

Need Served by Project (attach other pages as appropriate):

Proposed Budget:

Proposed Project Timeline:

Submitted By:

---

Executive Director, Minnesota Sports Facilities Authority

---

Date

Approved by Authority on \_\_\_\_\_

---

Chair, Minnesota Sports Facilities Authority



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form B

Micro Purchases and Small Purchases

Purchase Title:

Purchase Description (attach any purchase orders or contracts):

Method Used to Obtain Pricing, Quotations, Bids, or Proposals (if Joint Purchase Agreement, note which agreement):

Purchase Amount:

\_\_\_\_\_  
Contract Manager

\_\_\_\_\_  
Date

Proposed Small Purchase or Micro Purchase is Approved  or Not Approved

MSFA Executive Director: \_\_\_\_\_

Date: \_\_\_\_\_

Reason for denials: \_\_\_\_\_





**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form C

Best Value – RFP Approval Request

Project Title:

Attach complete text of proposed RFP to this form. If some portion of the RFP or exhibits or attachments thereto are too bulky or otherwise inappropriate for attachment, submit such documents on an attached drive or provide a site from which they may be downloaded.

Names of persons proposed as members of the Technical Review Committee:

Provide CVs or resumes of proposed Technical Review Committee members if proposing persons not already known to the Executive Director.

\_\_\_\_\_  
Contract Manager

\_\_\_\_\_  
Date

Draft RFP is Approved  or Not Approved

Proposed Technical Review Committee Members are Approved  or Not Approved

\_\_\_\_\_  
MSFA Executive Director

\_\_\_\_\_  
Date

Reason for any denials:



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form D

Best Value – Contract Approval

Project Title:

Attach completed/signed copies of Form A and Form C to show that the capital improvement project was approved by the Authority and the solicitation was reviewed and approved by the Executive Director.

Attach copy of proposed contract.

Submitted by:

\_\_\_\_\_

Contract Manager

\_\_\_\_\_

Date

Contract was Approved  or Not Approved

\_\_\_\_\_

Chair, Minnesota Sports Facilities Authority

\_\_\_\_\_

Date

Reason for any denial:



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form E

Sealed Bidding – Approval of Notice of Opportunity to Bid

Project Title:

Attach complete set of proposed specifications and text of proposed notice to this form. If set of specifications is too bulky and/or cannot be appropriately printed (as may be the case, for example, with construction design documents) then provide the specifications on a drive submitted with the form or indicate a secure web location from which the specifications may be downloaded.

Describe plan for providing notice of the opportunity to bid:

Submitted by:

\_\_\_\_\_  
Contract Manager

\_\_\_\_\_  
Date

Proposed specifications, proposed notice, and notice plan are Approved  or Not Approved

\_\_\_\_\_  
MSFA Executive Director

\_\_\_\_\_  
Date

Reason for any denials:



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form F

Sealed Bidding – Lowest Responsible Bidder

Project Title:

Attach summary of results of tabulation and investigation of bids.

Attach copy of form of contract provided with specifications.

The Contract Manager believes the following firm is the lowest responsible bidder:

Submitted by:

\_\_\_\_\_  
Contract Manager

\_\_\_\_\_  
Date

Authority Board determined that \_\_\_\_\_ is the lowest bidder.

OR

Authority Board has decided to reject all bids.



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form G

Sealed Bidding – Contract Approval

Project Title:

Attach completed/signed copies of Form A, Form E, and Form F to show that the capital improvement project was approved by the Authority, the bidding process was reviewed and approved by the Executive Director, and the determination of the lowest responsible bidder was made by the Board.

Attach copy of proposed contract and a red-line showing all changes between the version presented with this form and the one provided with the specifications. The red-line should demonstrate that no material changes have been made.

Submitted by:

---

Contract Manager

---

Date

Contract has been executed on \_\_\_\_\_

---

Executive Director



**MINNESOTA SPORTS FACILITIES AUTHORITY**

Form H

Major Purchase Using a Joint Purchasing Agreement

Purchase Title (attach any purchase orders or contracts):

Purchase Description:

Joint Purchase Agreement in Question:

Reason for Using Joint Purchase Agreement:

Purchase Amount:

---

Contract Manager

---

Date

Proposed Purchase is Approved  or Not Approved  (approval must come from the Board if the proposed purchase is in excess of \$250,000, and in such cases the signature below must come from the Chair of the Board)

---

Executive Director or Chair, Minnesota Sports Facilities Authority

---

Date

Exhibit A to Procedures and Procurement of Capital Enhancements

Minnesota Sports Facilities Authority

Templates for use in preparing RFPs, draft contracts, and invitations for competitive bids

## Template RFPs and Invitation for Responses to RFPs



REQUEST FOR PROPOSALS

[Project Description]

FOR CAPITAL IMPROVEMENT TO U.S. BANK STADIUM

IN MINNEAPOLIS, MINNESOTA

[Month, Date, Year \_\_\_\_\_, 201\_] ]

A. Project Background and Objectives

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

As set forth in the Act, the Authority may make capital improvements to design, development and construction of the Stadium and the Stadium Infrastructure, and the certain capital improvements that that Authority is soliciting in this Request for Proposals (“RFP”) shall be referred to in this RFP as the “Project”. To that end, the Authority has prepared this RFP for the [design, coordination, construction, supply, installation and testing] of the complete [description of the Project]. The preliminary program for the Project is incorporated within this RFP. Those who respond to this RFP shall be referred to as “Proposers”.

The Project is located at the Stadium [and other additional adjacent land that has been acquired by the Authority in Minneapolis, Minnesota]. The Construction Documents identifying and indicating the scope of the Project are also incorporated within this RFP as **Exhibit E**. The Project is being designed to meet the standards required for a National Football League (“NFL”) franchise, as well as other programmatic uses consistent with other multipurpose facilities. The Project will be designed in accordance with the design requirements set forth in the Act and such additional standards as are established by the Authority. The Project must be completed by \_\_\_\_\_, 201\_, (the “Required Construction Schedule”).

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

- [Design, coordination, supply, construction, installation and testing] of the Project;
- [All necessary equipment and other equipment as needed to provide a turnkey installation and delivery of the Project]; and
- Two-year on-site warranty to repair or replace the work and services constituting the Project.

B. Intent and Process of the Request for Proposals

This RFP is focused on the selection of Proposer that will provide the best value to the Authority in the [design, coordination, supply, construction, installation, commissioning, and testing] of the Project.

Proposers should have significant experience in the [design, coordination, supply, construction, installation, commissioning, and testing] of projects similar to the Project that is the subject of this RFP. It is the desire of the Authority to consider as part of its selection criteria the commitment of the Proposer to exert good faith efforts to comply with the plan of the Authority to ensure equitable opportunities for Minority Owned Business Enterprises (“MBE”) and Women Owned Business Enterprises (“WBE”) to participate in the Project. The successful Proposer or Proposers must also demonstrate the ability to exert good faith efforts to comply with workforce goals and targeted zip code hiring goals, and work with organizations to develop effective MBE, WBE and workforce recruitment efforts during the preconstruction, design, construction management, and the construction of the POS System for the Project. The Authority has developed an Equity Plan for this Project available [on its web site or as an attachment to this RFP], and as described below, each Proposer should provide a plan describing how they will encourage the participation and utilization of appropriate workforce, MBEs and WBEs in the Proposers’ performance of their services. MBEs and WBEs that are interested in acting as the Proposers for the Project are encouraged to respond to the RFP.

C. Scope of the Project Requirements

The proposal should be responsive to and explain how the Proposer will provide the following project requirements:

- [Technical requirements]
- 

D. Requested Qualifications

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

- Significant experience in the design, coordination, supply, installation, and testing of a projects similar to the Project that is the subject of this RFP.
- Experience in the design, coordination, supply, installation, and testing of a similar project in a professional or major collegiate sports venue with a seating capacity in excess of 15,000 seats.
- In-house capacity to produce necessary design, construction, and schedule documentation, which does not preclude any Proposer from also identifying potential sub-consultants that could assist in producing such estimates and schedules.
- Performance and payment bond bonding capacity or ability to obtain bonding capacity to the full amount of the selected scope of the Project System contained within the submitted Proposal.
- [Other]

#### E. RFP Timeline

Advertise and issue Request for Proposals  
 Pre-proposal Meeting [Location]  
 Written Questions Due  
 Proposals Due  
 Interviews of Shortlisted Proposers  
 Final Negotiations  
 Selection of Provider  
 Project Completion

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

#### F.1 Proposer Qualifications

The following items shall be included in a Proposal executive summary:

- Proposer’s name and address of office that would have central responsibility for the work. Identify the business form of Proposer and list the principal shareholders or other business owners. If the proposed form of entity is a joint venture, please identify each joint venture participant and their respective percentage of participation. Provide a summary, on three pages or less, describing why the Proposer is the most qualified to be the Provider for the Project.
- Provide copies of Proposer’s certificates of insurance showing Proposer’s current total limits of liability for commercial general liability, worker’s compensation, employer’s liability, business automobile liability, and professional liability.

- Provide representative list of similar projects managed by Proposer during that last 10 years or that are currently under construction or management. Include:
  - Project name.
  - Project location.
  - Contracting or ownership entity.
  - Project description; listing dates of construction, seating capacity, project gross square footage, and wireless environment cost. Proposers shall be specific about which projects have been worked on by current employees while employed by your firm vs. those that were worked on while employees of another employer. List key principal of Proposer who was responsible for the project.
  - Key contact or reference from project Owner including name, title, email, and telephone number.
- Provide evidence of Proposer’s capacity to provide or obtain performance and payment bonds in a letter from Proposer’s bonding company listing Proposer’s single project bonding capacity or limit. If Proposer is a joint venture, describe the joint venture’s plan to provide bonding capacity.
- Complete and submit a fully executed confidentiality agreement
- Submit response to State of Minnesota “Affirmative Action Data” form and “Statement of Non Collusion”.

F.2 Submittal Requirements: Evaluation of Proposals

Proposers shall include the following items in their Proposal. As described below, the Authority will score Proposals on a point system, with some criteria being graded on a pass fail basis. Proposers who fail any criterion may have their Proposal rejected. A total of [1,600] points will be available as follows:

Project Delivery:	[500] points
[_____]:	[500] points
Commercial Terms:	500 points
Interview:	[100]
Equitable Contracting and Hiring:	[Pass/Fail]

The Proposals receiving the highest three scores, as determined by the Authority in its sole discretion, will then be short-listed and selected to enter into final discussions and negotiations with the Authority, as a result of which the Authority will select in its

discretion the Proposer whose final Proposal is most advantageous and the best value to the Authority as permitted by the Act.

**Project Delivery – 500 Points (100 points each)**

1. Similar Project Experience. Describe Proposer’s experience with [design-build, fast track, confined space, etc] projects, and discuss Proposer’s view as to appropriate ways to proceed with the requirements for this Project.
2. Project Personnel. Provide names and resumes of key personnel who would be directly responsible for the work. Provide key contact telephone, fax, and email addresses. Provide organizational chart listing proposed team members by name and responsibility. Indicate other projects to which team members are assigned currently for years 201\_ to 20 . Any other relevant experience pertinent to the requirements for this Project shall be listed under “Other Significant Experience.”
3. Project Specific Risks and Solutions. Identify and describe the risks Proposer perceives as being significant for the scope of services required by this RFP, and how Proposer intends to mitigate, manage, and control those risks.
4. Project Controls. Describe Proposer’s approach and methodology for implementing project controls relating to budget and schedule compliance, and provide examples of Proposer’s experience in successfully managing similar projects that were completed within the established budget and schedule and fulfilled the defined project’s program.
5. Preliminary Performance Schedule. Please provide Proposer’s preliminary critical path method performance schedule with milestones interdependencies identified for critical items of design, ordering, construction, and installation work that generally demonstrates Proposer’s strategy for completing the scope of work required by this RFP by the required deadline.

**[ \_\_\_\_\_ – 500 Points]**

1. \_\_\_\_\_ .

**Commercial Terms – 500 Points**

1. Price. (200 Points) Provide itemized pricing on all necessary [design, coordination, supply, construction, installation, and testing] of a complete Project and all scope of work items required by this RFP, including without limitation:
  - All material and equipment;
  - All design or design assist services;
  - All construction and installation;
  - All training and testing;

- Opening event support;
- Warranty for onsite hardware maintenance for first and second year;
- Detailed cost information for ongoing fixed and variable costs, including licenses, hosting fees, customer service, tax calculation service fees, and any cost exclusions
- Estimate of all other project expenses including travel, shipping, and sales tax (if any).

2. Warranties and Maintenance. (50 points) A two year warranty will be requested covering the services and work performed for the Project. Provide copies of the proposed warranties and describe the warranty terms, durations, limitations, etc. [Describe any service and maintenance programs, including copies of all proposed or required service and maintenance contracts and fees.]

3. Agreement to or Requested Revisions to Trade Contract Agreement (**Exhibit F**) Contract Terms. (250 points). The extent to which revisions are requested to the Authority's proposed contract in this RFP will be given point deductions in the sole discretion of the Authority.

### **Interview – 100 Points**

1. Interview. The Authority will conduct an interview with each qualified Proposer that has submitted a responsive proposal.

### **Equitable Contracting and Hiring – Pass/Fail**

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

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

The Authority may change its scoring of Proposals as a result of interviews of and negotiations with Proposers.

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

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

Each Proposer submitting a Proposal in response to this RFP acknowledges and agrees that the preparation of all materials for submittal to the Authority and all presentation, related costs, and travel expenses are at Proposer's sole expense and that the Authority shall not, under any circumstances, be responsible for any cost or expense incurred by the Proposers, except the payment of the stipend that will be given to those short listed Proposers who properly submit in good faith the preliminary construction estimate and otherwise complete the RFP process. The Authority shall be allowed to keep any and all materials supplied by the Proposers in response to the RFP.

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

G. Project Labor Agreement

The Authority will require the Proposer to negotiate and enter into an appropriate labor agreement acceptable to the Authority for the Proposer's work required by this RFP.

H. Payment and Performance Bonds

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

I. Pre-proposal Meeting

A Pre-proposal meeting will be held \_\_\_\_\_, 20\_\_ , \_\_\_\_m. CST in [location].

Proposals are due by \_\_\_\_:00 \_\_.m. CST, \_\_\_\_\_, 20\_\_\_. One electronic copy and 4 bound copies of each Proposal should be enclosed in a sealed envelope addressed to:

[\_\_\_\_\_]
Minnesota Sports Facilities Authority
[Address: \_\_\_\_\_]

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

N. Questions or Inquiries

All questions must be submitted in writing no later than \_\_\_\_:00 \_\_.m. CST, \_\_\_\_\_, 20\_\_ to:

[\_\_\_\_\_]

[With copies to:]

O. Minnesota Government Data Practices

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

P. List of Exhibits

Exhibit A	Acknowledgement and Attestation Form
Exhibit B	Confidentiality Agreement
Exhibit C	Non Collusion Statement
Exhibit D	Minnesota Department Affirmative Action Data Page
Exhibit E	Construction Documents
Exhibit F	Trade Contractor Agreement



**REQUEST FOR PROPOSALS**  
**[INSERT TITLE]**  
**THE MINNESOTA SPORTS FACILITIES AUTHORITY**

**Project Background**

In 2012, the State of Minnesota enacted 2012 Minnesota Laws, Chapter 299 (codified at Minnesota Statutes, Chapter 473d) (the “Act”), to establish the Minnesota Sports Facilities Authority (“Authority”) and to provide for the construction, financing, and long term use of a stadium (the “Stadium”) and related stadium infrastructure (the “Stadium Infrastructure”) as a venue for professional football and a broad range of other civic, community, athletic, educational, cultural and commercial activities.

The Authority [insert specific background on project/work in question.]

## **PART ONE - GENERAL**

### **I. INTRODUCTION**

The Authority is seeking proposals from companies interested in [insert]. The 65,000 seat stadium is a state-of-the-art facility incorporating a turf playing surface, seven public concourses, a below grade service level, home and visiting team locker rooms, food service facilities, and all ancillary facilities necessary to support all events. The stadium is designed to provide a wide array of events for the community and state. It hosts high school and college sporting events, including baseball, soccer and football. The stadium can also accommodate large trade shows and concerts as well as smaller intimate events in the stadium's high end club spaces and locations throughout the building.

1. **Purpose**

The Authority is accepting proposals from companies ("Proposer[s]") interested in providing [insert].

2. **Contract Term**

The term of the contract shall be [insert].

3. **Contact Information**

The sole point of contact for this Request for Proposal is:

[insert]

4. **Proposal Conference**

A mandatory pre-proposal meeting will be held at [insert] on [insert date and time]. [If appropriate: A walk through of the facility will take place and area drawings and descriptions will be provided.]

5. **Written Questions**

Any questions concerning this request for proposal must be submitted via email to the person listed above in the contact information section no later than 5:00PM on [insert date].

6. **Proposal Submission Date**

Proposals must be received by the Authority prior to 5:00PM central standard time on [insert date]. Any proposal received after this time will not be considered. Proposals must be sent to the address listed above under Contact Information.

The Authority will not be liable for any costs incurred in the preparation and presentation of the Response. Each Proposer submitting a Proposal in response to

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

7. **Minnesota Government Data Practices**

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

8. **Reserve Clause**

The Authority reserves the right to reject any and all proposals at any time for any reason whatsoever, and/or change the timing and procedure of this proposal process.

9. **Requested Qualifications**

It is the request and intent of the Authority that Proposers responding to the RFP have the following qualifications:

- Proposer must have a demonstrated experience and capability in [insert]
- [add additional bulleted items as necessary]

10. **Post-Proposal Interview/Presentation**

After the proposals are received and evaluated by the Authority, Proposers will be asked to meet with the Authority for a post proposal interview/presentation.

The post proposal interview may include, but is not limited to, a review of the proposal, pricing, the scope of services requested, the Proposer's proposed team and their qualifications, and Proposer's approach to the work. The Authority reserves the right to have the Proposer submit further clarification on questions in writing.

11. **Acceptance of Proposal (Award)**

It is the intent of the Authority to award a contract to the Proposer offering the best value, provided the proposal has been submitted in accordance with the

requirements of the Contract Documents and does not exceed the Authority's budget.

12. **Evaluation of Proposals**

The Authority will score proposals on a point system, with some criteria being graded on a pass/fail basis. Proposers who fail any criterion may have their proposal rejected. The Authority reserves the right to reject any or all proposals if responses to the above or any other information in the Authority's judgment are unsatisfactory or do not meet the budget, the total aggregate project budget, or required performance standards.

The criteria on which proposals shall be evaluated are as follows:

[insert criteria for project and the weight given to each criterium, here is sample:

- A. Project Delivery (150 points)
  - i. Proposer's experience with similar projects.
  - ii. The key personnel directly responsible for the work.
  - iii. Professional services work plan and the proposed contract organization.
- B. Price (100 points)
- C. Commercial Terms (100 points)
  - i. The substantive effect of the proposed revisions to the Authority's proposed Professional Services Agreement.
- D. Interview (50 points)
- E. Equitable Contracting and Hiring – Pass/Fail
  - i. Proposer's past practices.
  - ii. Proposer's plan to use good faith efforts to comply with the Equity Plan.]

13. **RFP Timeline**

Advertisement and Issuance of Request for Proposals	[insert]
Pre-proposal meeting	[insert]
Written Questions Due	[insert]

Proposals Due [insert]

Selection of Provider [insert]

## II. **PROPOSAL FORMAT**

### 1. **General**

- A. Description of Proposer – provide a brief company overview including history, size, number of employees, affiliated companies, etc. The same information should be provided for any identified subconsultants or joint venture partners that would be working on the contract.
- B. Experience of Proposer – List relevant company experience within the past five (5) years, including current contracts and references. In particular, identify any experience on contracts similar in scope and size to the services sought under this request for proposal. Information should include any and all joint venture partners.
- C. Contract Organization – Identify and explain the specific organization of the proposed project team, including key personnel and how this project fits in with other areas of your company’s operation.
- D. Experience of Key Personnel – Briefly summarize the experience of key personnel and managers who would be working on this contract.
- E. Professional Services Work Plan – Present a general plan of approach for meeting the specifications.
- F. Commercial Terms – Proposers will provide proposed comments or revisions, if any, to the Authority’s proposed Professional Services Contract, attached hereto as Exhibit A.
- G. Equitable Contracting and Hiring – Proposer will describe its practices and history of hiring WBEs and WBEs and its specific plan to use good faith efforts to comply with the Equity Plan attached hereto as Exhibit B.

### 2. **Price Proposal**

Based on the anticipated scope of work and the proposed work plan, please provide a detailed budget to identify on a line item basis all anticipated charges to provide the specified services.

### 3. **Additional Requirements**

Proposals shall be signed by an authorized representative of the Proposer. All information requested must be submitted to include the following:

- A. Proposer must provide evidence/documentation at the time of award, that they have any and all licenses from the State of Minnesota necessary to legally provide the scope of work in question.
- B. A certificate of insurance entailing all coverage's for the Proposer in the State of Minnesota.

## Request for Best Value Proposals – Construction

Sealed responses to the MSFA's Request for Best Value Proposals (RFP) will be received at the Office of [designated MSFA official], Minnesota Sports Facilities Commission, 1005 4<sup>th</sup> Street South, Minneapolis, MN 55415, until [DATE, TIME] for procurement of [DESCRIPTION of CONSTRUCTION PROJECT] according to the attached plans and specifications. Responses from proposers to the MSFA's RFP will be publicly opened and read aloud at [DATE, TIME] at [LOCATION OF BID OPENING].

No responses to the MSFA's RFP will be considered unless sealed, labeled as a response to the MSFA's RFP for the procurement, labeled with the proposer's name, and received by [designated MSFA official] before the deadline specified above. Each response to the MSFA RFP must be accompanied by a proposal bond or a check for five percent (5%) of the proposal amount. This proposal security shall be payable as liquidated damages if the proposal is accepted and the proposer fails to promptly enter into the written contract for the procurement. The proposal securities from unsuccessful proposers will be returned within ten working days after contract execution or within 90 days of the proposal opening.

Responses to the MSFA's RFP must be submitted using the proposal form identified in the specifications. Proposals may be withdrawn until the deadline for proposal submission. Proposals may not be conditional or qualified, and must be for the entire scope of procurement in the plans and specifications.

The MSFA intends to award the contract to the responsive and responsible proposer providing the "best value" to the MSFA as the term "best value" is defined in the RFP and proposal form. The MSFA reserves the right to reject all proposals and to resolicit the procurement, to not proceed with the procurement, and to waive any and all non-material informalities and irregularities in the procurement process. The MSFA shall determine each proposal's responsiveness after the proposal opening, and it shall reject non-responsive proposals. The MSFA may determine if a proposer is a responsible proposer before or after the proposal opening. The Authority may also delay the contract award in its sole discretion. All proposals shall remain open and available for the MSFA to accept for a period of 90 days after the date of proposal opening. Proposers shall promptly provide any information requested by the MSFA to assist it in making responsibility determinations. Compliance with the MSFA's Equity Plan, which is available on the MSFA's website, is required and can be considered in the MSFA's review of a proposer's responsibility.

A pre-proposal meeting will be held at [LOCATION] on [DATE, TIME]. The plans, specifications and contract forms are available at [LOCATION – physical or electronic for download, and the specifications shall include the requirements for proposal bonds, payment and performance bonds, and insurance, and include, or incorporate by reference, any and all requirements resulting from the Authority's Equity Plan]. Each proposer is responsible for reading and understanding the Contract Documents. If any proposer discovers an error or ambiguity in the Contract Documents prior to submitting its proposal, that proposer must raise the issue in writing with the MSFA before the date for opening proposals. Proposals may not be withdrawn after the proposal submission deadline due to the discovery of a patent error or ambiguity in the Contract Documents.

**NON-COLLUSION AFFIDAVIT**

[PROJECT NAME]  
[PROJECT NUMBER]

I, \_\_\_\_\_ (Name), being first duly sworn, state that I am  
the \_\_\_\_\_ (office held) of  
\_\_\_\_\_ (name of Bidder). I executed this bid having full authority to do  
so. I certify that Bidder has not, directly or indirectly, entered into any agreement, participated in any  
collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the  
above named project. No person or persons, natural or corporate, has, have, or will receive, directly or  
indirectly, any rebate, fee, gift, commission, or other thing of value in consideration for this offer.

\_\_\_\_\_

Signature

Subscribed and sworn to before me

this \_\_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_

Notary Public



Template invitations to bid for goods and construction services

## Invitation to Bid – Goods

Sealed bids will be received at the Office of [designated MSFA official], Minnesota Sports Facilities Commission, 1005 4<sup>th</sup> Street South, Minneapolis, MN 55415, until [DATE, TIME] for procurement of [DESCRIPTION of GOODS] according to the attached plans and specifications. Bids will be publicly opened and read aloud at [DATE, TIME] at [LOCATION OF BID OPENING].

No bids will be considered unless sealed, labeled as a bid for the procurement, labeled with the bidder's name, and received by [designated MSFA official] before the deadline specified above. Each bid must be accompanied by a bid bond or a check for five percent (5%) of the bid amount. This bid security shall be payable as liquidated damages if the bid is accepted and the bidder fails to promptly enter into the written contract for the procurement. The bid securities from unsuccessful bidders will be returned within ten working days after contract execution or within 90 days of the bid opening.

Bids must be submitted using the bid form identified in the specifications. Bids may be withdrawn until the deadline for bid submission. Bids may not be conditional or qualified, and must be for the entire scope of procurement in the specifications.

The MSFA intends to award the contract to the responsive and responsible bidder providing the lowest bid. The MSFA reserves the right to reject all bids and to rebid the procurement, to not proceed with the procurement, and to waive any and all non-material informalities and irregularities in bidding. The MSFA shall determine each bid's responsiveness after the bid opening, and it shall reject non-responsive bids. The MSFA may determine if a bidder is a responsible bidder before or after the bid opening. The Authority may also delay award in its sole discretion. All bids shall remain open and available for the MSFA to accept for a period of 90 days after the date of bid opening. Bidders shall promptly provide any information requested by the MSFA to assist it in making responsibility determinations. Compliance with the MSFA's Equity Plan, which is available on the MSFA's website, is required and can be considered in the MSFA's review of a bidder's responsibility.

A pre-bid meeting will be held at [LOCATION] on [DATE, TIME]. The plans, specifications and contract forms are available at [LOCATION – physical or electronic for download, and the specifications shall include the requirements for bid bonds, payment and performance bonds, and insurance, and include, or incorporate by reference, any and all requirements resulting from the Authority's Equity Plan]. Each bidder is responsible for reading and understanding the Contract Documents. If any bidder discovers an error or ambiguity in the Contract Documents prior to bidding, that bidder must raise the issue in writing with the MSFA. Bids may not be withdrawn after the bid submission deadline due to the discovery of a patent error or ambiguity in the Contract Documents.

## Invitation to Bid – Construction

Sealed bids will be received at the Office of [designated MSFA official], Minnesota Sports Facilities Commission, 1005 4<sup>th</sup> Street South, Minneapolis, MN 55415, until [DATE, TIME] for construction of [PROJECT DESCRIPTION] according to the project's plans and specifications. Bids will be publicly opened and read aloud at [DATE, TIME] at [LOCATION OF BID OPENING].

No bids will be considered unless sealed, labeled as a bid for the project, labeled with the bidder's name, and received by [designated MSFA official] before the deadline specified above. Each bid must be accompanied by a bid bond or a check for five percent (5%) of the bid amount. This bid security shall be payable as liquidated damages if the bid is accepted and the bidder fails to promptly enter into the written contract for the project and provide the required payment and performance bonds. The bid securities from unsuccessful bidders will be returned within ten working days after contract execution or within 90 days of the bid opening.

Bids must be submitted using the bid form identified in the project's Contract Documents. Bids may be withdrawn until the deadline for bid submission. Bids may not be conditional or qualified, and must be for the entire scope of work in the Contract Documents.

The MSFA intends to award the contract to the responsive and responsible bidder providing the lowest bid. The MSFA reserves the right to reject all bids and to rebid the project, to not proceed with the project, and to waive any and all non-material informalities and irregularities in bidding. The MSFA shall determine each bid's responsiveness after the bid opening, and it shall reject non-responsive bids. The MSFA may determine if a bidder is a responsible bidder before or after the bid opening. The Authority may also delay award in its sole discretion. All bids shall remain open and available for the MSFA to accept for a period of 90 days after the date of bid opening. Bidders shall promptly provide any information requested by the MSFA to assist it in making responsibility determinations. Disadvantaged Business Enterprises shall be considered according to the MSFA's Equity Plan, which is available on the MSFA's website. Compliance with the MSFA's Equity Plan, which is available on the MSFA's website, is required and can be considered in the MSFA's review of a bidder's responsibility.

A pre-bid meeting followed by a site tour will be held at [LOCATION] on [DATE, TIME]. Project plans, specifications, and forms are available at [LOCATION – physical or electronic for download, , and the specifications shall include the requirements for bid bonds, payment and performance bonds, and insurance, and include, or incorporate by reference, any and all requirements resulting from the Authority's Equity Plan]. Each bidder is responsible for inspecting the project site and for reading and understanding the Contract Documents. If any bidder discovers an error or ambiguity in the Contract Documents prior to bidding, that bidder must raise the issue in writing with the MSFA. Bids may not be withdrawn after the bid submission deadline due to the discovery of a patent error or ambiguity in the Contract Documents.

## Template bid forms for goods and construction services

**BID FORM**

[PROJECT NAME]  
[PROJECT NUMBER]

In response to the Invitation to Bid dated [DATE OF IFB],  
\_\_\_\_\_ (Name of Bidder) offers to  
provide all goods in accordance with the Contract Documents for the total sum of  
\$ \_\_\_\_\_.

**UNIT PRICES**

Bidder's offer is based on the unit prices listed below:

<b>Bid Item Description</b>	<b>Quantity</b>	<b>Units</b>	<b>Price per Unit</b>	<b>Extended Price</b>

**ADDENDA**

Bidder acknowledges receipt of the following addenda and represents that those addenda are included  
in its bid:

Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No. \_\_\_\_\_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_

**REPRESENTATIONS**

Bidder represents that:

- It has read and understands the Contract Documents;
- It has not identified any errors or ambiguities in the Contract Documents;

- It understands that if the MSFA accepts this offer, but Bidder does not promptly execute the Contract, Bidder and its bid security provided with this bid will be liable to pay the amount of the bid security to the MSFA as liquidated damages suffered by the MSFA for the Bidder's inability or unwillingness to execute the Contract;
- It will abide by and comply with the MSFA's Equity Plan;
- This bid is offered without qualification or conditions; and
- The person executing this offer is authorized by Bidder to bind Bidder.

Dated: \_\_\_\_\_

Bidder's Name: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_  
\_\_\_\_\_

Bidder's Telephone: \_\_\_\_\_

Bidder's Fax: \_\_\_\_\_

Bidder's Tax ID Number: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

**BID FORM**

[PROJECT NAME]  
[PROJECT NUMBER]

In response to the Invitation to Bid dated [DATE OF IFB],  
\_\_\_\_\_ (Name of Bidder) offers to  
accomplish all work and to provide all materials to fully complete the Project in accordance with the  
Contract Documents for the total sum of \$ \_\_\_\_\_.

**UNIT PRICES**

Bidder's offer is based on the unit prices listed below:

<b>Bid Item Description</b>	<b>Quantity</b>	<b>Units</b>	<b>Price per Unit</b>	<b>Extended Price</b>

**ADDENDA**

Bidder acknowledges receipt of the following addenda and represents that those addenda are included  
in its bid:

Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_  
Addenda No.     \_, Dated \_\_\_\_\_

**REPRESENTATIONS**

Bidder represents that:

- It has read and understands the Contract Documents;
- It has not identified any errors or ambiguities in the Contract Documents;

- It has had the opportunity to inspect the Project site and to conduct any necessary tests;
- It understands that if the MSFA accepts this offer, but Bidder does not promptly execute the Contract and provide the required payment and performance bonds, Bidder and its bid security provided with this bid will be liable to pay the amount of the bid security to the MSFA as liquidated damages suffered by the MSFA for the Bidder's inability or unwillingness to execute the Contract;
- It will abide by and comply with the MSFA's Equity Plan;
- This bid is offered without qualification or conditions;
- The person executing this offer is authorized by Bidder to bind Bidder; and
- The Bidder has complied with and is not in violation of the Responsible Contractor Act.

Dated: \_\_\_\_\_

Bidder's Name: \_\_\_\_\_

Bidder's Address: \_\_\_\_\_

\_\_\_\_\_

Bidder's Telephone: \_\_\_\_\_

Bidder's Fax: \_\_\_\_\_

Bidder's Tax ID Number: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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



**NON-COLLUSION AFFIDAVIT**

[PROJECT NAME]  
[PROJECT NUMBER]

I, \_\_\_\_\_ (Name), being first duly sworn, state that I am  
the \_\_\_\_\_ (office held) of  
\_\_\_\_\_ (name of Bidder). I executed this bid having full authority to do  
so. I certify that Bidder has not, directly or indirectly, entered into any agreement, participated in any  
collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the  
above named project. No person or persons, natural or corporate, has, have, or will receive, directly or  
indirectly, any rebate, fee, gift, commission, or other thing of value in consideration for this offer.

\_\_\_\_\_

Signature

Subscribed and sworn to before me

this \_\_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_

Notary Public

## Template Contracts (Professional Services Agreement and Trade Contract)

---

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

---

**TRADE CONTRACT AGREEMENT**

**THIS TRADE CONTRACT AGREEMENT** (“Trade Contract Agreement”) is made as of the  
[redacted] day of [redacted] in the year of [redacted] (“Effective Date”).

**BY AND BETWEEN**

**The AUTHORITY:**

\_\_\_\_\_  
**MINNESOTA SPORTS FACILITIES AUTHORITY**  
1005 4<sup>th</sup> Street South  
Minneapolis, MN 55415

and the

**TRADE CONTRACTOR:**

For:

For the following **PROJECT:** Capital Improvement to the Stadium and Stadium  
Infrastructure for U.S. Bank Stadium for the following work:

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

## 1. General Provisions

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

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

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

## 2. Trade Contractor Work

**2.1 Scope of Work.** The Trade Contractor shall provide all services, work, labor, materials, equipment and other necessary payments as are required to complete the Trade Contractor Work as set forth in the Trade Contract Documents and as set forth on **Exhibit 1**. The Trade Contractor Work is intended to be inclusive of all design, construction, services, work, labor, materials, engineering, Testing, tools, supplies, facilities, management, supervision, permits, licenses, taxes, inspections and equipment required by, or reasonably inferable from, the Trade Contract Documents necessary to complete the Trade Contractor Work pursuant to the Construction Schedule for the Trade Contract Amount.

**2.2 Responsibilities.** The Trade Contractor Work consists of those services performed by the Trade Contractor, its employees, Subcontractors, Suppliers, and Sub-subcontractors of all tiers.

The Trade Contractor is solely and strictly responsible for the performance of all Persons performing the Trade Contractor Work, including Subcontractors, Suppliers, and Sub-subcontractors of all tiers. It is the responsibility of the Trade Contractor to ensure that all Subcontractors and Suppliers, including Sub-subcontractors at every tier, that is performing any portion of the Trade Contractor Work are familiar with all the terms and conditions of this Trade Contract Agreement and the Trade Contract Documents and that their performance is in accordance therewith.

**2.3 Cooperation.** The Trade Contractor shall cooperate in all respects with other Persons associated with the Authority, which may include the Architect, lenders, any lender's inspecting architect or representative, insurers, the Team, sponsors, the National Football League, television broadcast networks, radio broadcasters, cellular/distributed antennae providers, and Governmental Authorities.

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

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

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

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

**2.7 [RESERVED].**

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

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

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

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

**2.10 [RESERVED]**

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

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

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

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

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

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

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

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

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

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

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

### **3. Design Services.**

**3.1 Performance and Coordination.** The Design Services provided by the Trade Contractor, or through a design professional Consultant that Trade Contractor retains to fulfill its obligations under the Trade Contract Agreement, shall be performed in strict accordance with all provisions of the Act. Trade Contractor shall coordinate and integrate the Design Services with the Architect, Construction Manager and other Trade Contractors and Vendors to allow the Construction Manager, Vendors, and Trade Contractors to complete their work.

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

#### **4. Contract Time**

**4.1 Time.** The Trade Contractor shall perform the Trade Contractor Work expeditiously, efficiently, and safely in accordance with the Construction Schedule. The Trade Contractor shall commence its Trade Contractor Work promptly. Trade Contractor shall achieve Substantial Completion of the Trade Contractor Work within the time frames specifically described in **Exhibit 4**. The Trade Contractor shall be considered to have achieved Final Completion only after the Trade Contractor completes all of the Trade Contractor Work and the Trade Contractor Work is accepted by the Authority.

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

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



**4.4 Final Completion.** Within sixty (60) Days after Substantial Completion, the Trade Contractor shall achieve Final Completion of all Trade Contractor Work. The date of Final Completion shall establish the start of responsibility under the Agreement for security, maintenance, heat, utilities, damage to the Trade Contractor Work, and insurance. Warranties required by the Trade Contract Documents shall commence on the date of Final Completion of the Trade Contractor Work or designated portion thereof. The Certificate of Final Completion shall be submitted to the Authority and the Trade Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Final Completion of the Trade Contractor Work shall not occur until the Trade Contractor submits to the Authority (a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Trade Contractor Work for which the Authority or the Authority's property might be responsible or encumbered have been paid or otherwise satisfied, (b) a certificate evidencing that insurance required by the Trade Contract Documents to remain in force after Final Completion is currently in effect and that Trade Contractor will give the Authority and Team not be canceled or allowed to expire until at least thirty (30) Days' prior written notice to the Authority and Team before they are allowed to expire or be cancelled except in the event of non-payment of premium, in which case seven (7) Days' prior notice will be provided, (c) a written statement that the Trade Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Trade Contract Documents or the Agreement, (d) consent of surety, if any, to final completion, and (e) if required by the Authority, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, Claims, security interests or encumbrances arising out of the Trade Contract Documents, to the extent and in such forms as may be designated by the Authority. If a Lien or Claim for payment relating to the Trade Contractor Work remains unsatisfied after Final Completion, the Trade Contractor shall pay to the Authority all money that the Authority may be compelled to pay in discharging such Lien or Claim, including all costs and reasonable attorneys' fees.

**4.5 Force Majeure.** If the Trade Contractor is delayed in the progress of the Trade Contractor Work by events of Force Majeure, fire or other property damage not caused by the Trade Contractor or a Subcontractor, Supplier, Sub-subcontractor of any tier, or other Person for whom Trade Contractor is legally responsible, unusually severe weather conditions not customarily encountered in the area surrounding the Project which affect the scheduled Critical Path of the Trade Contractor Work, or any other cause for which the Trade Contractor is not responsible, then the Contract Time, provided for in **Paragraph 4.1** above, shall be extended by a Contract Revision for a reasonable period of time as agreed to by the Authority. No adjustments to the Contract Time are acceptable without the prior written approval of the Authority as a Contract Revision.

**4.6 Contract Time Extensions.** Notwithstanding anything to the contrary in this Trade Contract Agreement, the Trade Contractor agrees that, regardless of the cause of delay and whether or not any extension of Contract Time may be granted therefore, Trade Contractor shall continue to prosecute all Trade Contractor Work not directly affected by said cause of delay and, with respect to such portion or portions of the Trade Contractor Work as may be so affected, shall take all reasonable measures to minimize the effect of said cause of delay. It is a condition precedent to the consideration or prosecution of any Claim for an extension of Contract Time that the foregoing provisions be strictly adhered to in each instance and, if the Trade Contractor fails to comply, Trade Contractor shall be deemed to have waived the Claim to the extent that proper mitigation would have shortened the period of delay. The Trade Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (a) is not caused, or could not have been reasonably avoided, by the Trade Contractor, or (b) could not be reasonably limited or avoided by the Trade Contractor's timely notice to the Authority of the delay or reasonable likelihood that a delay will occur.

**4.7 Progress Report.** If the Trade Contractor submits a progress report indicating, or otherwise expresses an intention to achieve, completion of the Trade Contractor Work prior to any completion date required by the Trade Contract Documents or expiration of the Contract Time, no

liability of the Authority to the Trade Contractor for any failure or inability of the Trade Contractor to so complete the Trade Contractor Work shall be created or implied.

**4.8 Partial Use.** The Authority shall have the right to use, without prejudice to rights of either Party, any completed or Substantially Completed portions of the Trade Contractor Work, notwithstanding the fact that time for completion of entire Trade Contractor Work, or portions thereof, may not be expired. Use by Authority shall not constitute, in itself, acceptance of the Trade Contractor Work.

**4.9 to 4.16 [RESERVED]**

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

**4.18 Indemnification by Trade Contractor.**

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

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

**4.18.3** In addition to its duties under **Paragraph 4.18** herein, the Trade Contractor shall defend, indemnify, and hold harmless the Authority and the Indemnitees from and against

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

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

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

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

## **5. Trade Contract Amount**

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

## **6. Record Retention, Audit and Claims**

**6.1** The Trade Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Trade Contract Agreement and as directed and approved by the Authority and Team. Trade Contractor shall afford the Authority reasonable access to appropriate personnel for interviews and the necessary and relevant records, books, cost reports, labor rates, labor schedules, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda, and other electronic and hard copy data to the extent relating to the Trade Contractor's right to payment under and the Trade Contractor's compliance with the terms and conditions of this Trade Contract Agreement, and the Trade Contractor shall preserve this information for a period of seven (7) years after final payment, or for such longer period as may be required by Applicable Laws. The Trade Contractor shall account for and keep track of the Cost of the Trade Contractor Work, including all materials, equipment and labor utilized in the performance of the Trade Contractor Work, and shall keep such full and detailed accounts as may be necessary for proper financial management under this Trade Contract Agreement. Subcontractors retained by the Trade Contractor on a "cost-plus" basis shall have the same obligations to retain records and cooperate with audits as are required of the Trade Contractor under this **Paragraph 6.1**. In addition to all other rights under the Trade Contract Documents, the Authority and Team representatives shall have the right to conduct full and complete audits of the Trade Contractor with respect to the Trade Contractor Work and also to the extent relating to the Trade Contractor's right to payment under and the Trade Contractor's

compliance with the terms and conditions of this Trade Contract Agreement. The Trade Contractor shall provide the Authority and Team copies of all documents and records associated with the Work that the Authority or Team deem necessary. The Trade Contractor shall provide all Subcontracts, material purchase orders, and insurance certificates to the requesting party in an executed format for all Subcontractors and Suppliers prior to any such Person commencing work on the Project.

## **6.2 Claims and Disputes**

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

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

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

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

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

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

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

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

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

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

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

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

### **6.3 Review of Claims and Disputes**

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

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

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

### **6.4 Dispute Resolution**

**6.4.1 Mediation.** Claims, disputes, or other matters in controversy arising out of or related to the Trade Contractor Work shall be subject to mediation as a condition precedent to binding dispute resolution. The Parties shall submit a written demand for

mediation to the Authority, which shall describe in detail the facts and circumstances of the dispute. The Authority shall designate a neutral third-party to serve as mediator. The mediator shall hear the matter in Minneapolis, Minnesota, and provide an informal opinion and advice, none of which shall be binding on the Parties involved in the dispute. The opinion shall be submitted to the parties in dispute within twenty (20) Days of the mediator hearing the dispute. The Parties in dispute will then agree within ten (10) Days to resolve the dispute pursuant to the mediator's advice or submit the matter to arbitration pursuant to **Subparagraph 6.4.2**. The mediator's costs shall be shared equally by the Parties in the dispute. The request to mediate may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) Days from the date of filing, unless stayed for a longer period by agreement of the Parties or court Order. If an arbitration is stayed pursuant to this **Subparagraph 6.4.1**, the Parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

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

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

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

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

**6.4.8 Litigation of Third-Party Claims.** If a third-party who is not a member of the Project Team sues a member of the Project Team, the Authority, or Team in a court of law (“**Third-Party Suit**”), then the Authority, or the Team as applicable, shall have the absolute discretion to join in the Third-Party Suit members of the Project Team who are involved in common questions of law or fact or whose participation is necessary to provide complete relief in the Third-Party Suit, and the Authority, and the Team as applicable, have the absolute discretion to decide to waive and not require arbitration of Claims involving the Third-Party Suit as otherwise provided in these Terms of Design and Construction. The Project Team hereby consents to jurisdiction and venue in any court in which the suit is commenced or to which such Third-Party Suit is removed.

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

## 7. Changes

**7.1 Contract Request.** All changes to the Trade Contractor Work must be approved in strict accordance with the requirements of this Trade Contract Agreement. No change in the Trade Contractor Work, in any form, will be approved without the Trade Contractor providing the Authority with all reasonably required documentation, including a properly completed Contract Request Form, which will be provided by the Authority. The Contract Request Form, and all required contractual documentation associated therewith and required by the Authority, must be provided to and approved by the Authority in writing before commencement of any proposed changes in any part of the Trade Contractor Work. The Authority will administer a Pending Change Report to identify and track any and all potential changes in the Trade Contractor Work, and the Trade Contractor is obligated to provide all supporting documentation reasonably required by the Authority to administer the Pending Change Report. The Authority will use the Pending Change Report to provide the Trade Contractor with written authorization to proceed with commencing approved changes, if any, to the Trade Contractor Work. The Trade Contractor is responsible to immediately provide the Authority with timely notification of any pending change associated with the Trade Contractor Work in accordance with the requirements of this **Paragraph 7.1** and the Trade Contract Documents and to provide projected cost impacts, if any, within five (5) Days of notification of such change. The Trade Contractor is responsible to provide final costs associated with any pending change within two (2) weeks of inclusion on the Pending Change Report, or such other timeframe as reasonably agreed to in writing by the Authority. If the Trade Contractor performs any alleged change in the Trade Contractor Work in the absence of proper notice required by the Trade Contract Documents, the Trade Contractor then assumes all liability for such Trade Contractor Work, understands and agrees that the Trade Contractor will not be paid for such Trade Contractor Work, and agrees that the Authority is not obligated to compensate the Trade Contractor for such alleged change as a Cost of the Trade Contractor Work or as an addition to this Trade Contract Amount.

**7.2 Contract Revision.** A Contract Revision related to the Trade Contractor Work is a written order signed by the Authority and Trade Contractor, and issued after execution of this Trade Contract Agreement, stating their agreement with respect to a Change in the Trade



Contractor Work, and which may include an adjustment in the Trade Contract Amount and/or an adjustment to the Construction Schedule or Contract Time. Costs to the Authority resulting from a Change in the Trade Contractor Work shall be determined in writing between the Authority and the Trade Contractor before issuance of any Contract Revision. The Trade Contractor shall not proceed with any Changes in the Trade Contractor Work either without a prior written authorization from the Authority, or if the Authority does not consider the Trade Contractor Work in question to be a Change in the Trade Contractor Work, then without a written notice of Claim as provided herein. The Trade Contractor agrees that it will not be paid for and waives any Claim for payment associated with any alleged Change in the Trade Contractor Work or any Contract Revision unless the Trade Contractor fully complies with the terms of this **Paragraph 7.2** and the notice of Claims provision **Paragraph 6.2**. The Trade Contractor further assumes any and all risks or liabilities associated with the Trade Contractor proceeding with any alleged Change to the Trade Contractor Work or any pending Contract Revision that is not administered, or preserved by a written notice of Claim, in strict accordance with the Trade Contract Documents. Except as otherwise set forth therein, any executed Contract Revision shall constitute a final settlement of all matters relating to or arising out of the change in the Trade Contractor Work which is the subject of the Contract Revision, including all direct and indirect costs associated with such change and any and all adjustments to the Trade Contract Amount and the Construction Schedule or Contract Time.

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

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

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

## **8. Subcontractors**

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

**8.2 Subcontract Relations.** Each Subcontract shall obligate the Subcontractor, to the extent applicable to the Trade Contractor Work performed by the Subcontractor, to assume toward the

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

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

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

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

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

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

## **9. Coordination with Construction Manager**

**9.1 Project Schedule.** The Trade Contractor will be responsible for coordinating and scheduling with the Construction Manager. The Trade Contractor shall be responsible for managing and administering the coordination and integration of the Trade Contractor Work with the work of other Trade Contractors and Vendors being performed at the Project Site.

**9.2 Coordination.** The Trade Contractor shall afford the Authority, Construction Manager, other Trade Contractors and Vendors reasonable opportunity for introduction and storage of their materials and equipment and performance of the work other Trade Contractors or Vendors at the Project Site. The Trade Contractor shall properly and fully connect and coordinate its Trade Contractor Work with the work of other Trade Contractors or Vendors so as not to interfere with or to delay the work of such other Trade Contractors or Vendors.

**9.3 Damage.** The Trade Contractor shall promptly remedy damage caused by the Trade Contractor to completed or partially completed construction or to property of the Authority or work of other Trade Contractors or Vendors. The Trade Contractor shall reimburse the Authority

for costs incurred by the Authority which are payable to other Trade Contractors or Vendors because of delays, improperly timed activities, defective Trade Contractor Work or other errors or omissions of the Trade Contractor.

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

## **10. Compliance with Applicable Law**

**10.1 Equity Plan.** The Trade Contractor shall comply with all Applicable Laws and any special requirements in the Contract Documents regarding equal employment opportunity, Targeted Business, and workforce participation initiatives. The Trade Contractor shall demonstrate good faith efforts to utilize minority (“**MBE**”) and women-owned (“**WBE**”) business enterprises (hereinafter referred to as “**Targeted Businesses**”). The Authority may retain the services of a Targeted Business Coordinator to assist with meeting Targeted Business and workforce participation goals. The Trade Contractor shall submit to the Authority a Targeted Business Enterprise Participation Plan within ten (10) Days after executing this Trade Contract Agreement. The Authority requires that the Trade Contractor utilize good faith efforts to achieve the goals for MBE and WBE participation set forth in the Authority’s Equity Plan for the Trade Contractor Work. The Authority also requires that the Trade Contractor utilize good faith efforts to achieve the workforce participation goals for minority and women workers regarding the Trade Contractor Work. The Authority agrees that it will follow the Equity Plan attached as **Exhibit 3** hereto and that the Equity Plan is applicable to its Trade Contractor Work. The Trade Contractor shall utilize the Targeted Business Coordinator to the fullest extent possible to accomplish the following activities:

- .1 Identify the trades, services and suppliers needed for the Trade Contractor Work.
- .2 Identify Targeted Businesses that have the resources and capabilities to participate in the Trade Contractor Work.
- .3 Contact Targeted Businesses to solicit bids for work on the Trade Contractor Work.
- .4 Certify currently uncertified but qualified companies as Targeted Businesses for participation in the Trade Contractor Work.
- .5 Develop the Targeted Business Enterprise Participation Plan for submittal with any bid or proposal from a Subcontractor.
- .6 Track participation of Targeted Businesses.
- .7 Prepare Targeted Business participation reports required by the Authority.
- .8 Comply with workforce utilization requirements of the Authority’s Equity Plan for the Trade Contractor Work, including requirements established pursuant to Section 17, subd.1 of the Act.

Trade Contractor’s failure to use good faith efforts to achieve the Authority’s Targeted Business participation goals or to follow the requirements of the Authority’s Equity Plan for the Trade Contractor Work may result in the assessment of appropriate damages.

## **11. Payments**

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

**11.2 Schedule of Values.** The Trade Contractor shall submit to the Authority a Schedule of Values allocated to various portions of the Trade Contractor Work, prepared in such form and supported by such data to substantiate its accuracy as the Authority deems necessary. The

Authority shall have the right to approve the Trade Contractor's format of the Schedule of Values and all subsequent forms of the Schedule of Values. The Schedule of Values shall be used by the Authority as a basis for reviewing the Trade Contractor's Applications for Payment.

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

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

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

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

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

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

**11.4 Materials and Equipment.** Unless otherwise provided in the Trade Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Trade Contractor Work. If approved in advance by the Authority, payment may be made for materials and equipment suitably stored

off the Project Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project Site shall be conditioned upon compliance by the Trade Contractor with procedures satisfactory to the Authority to establish the Authority's title to such materials and equipment or otherwise protect the Authority's interests, and shall include applicable insurance, storage, and transportation to the Project Site for such materials and equipment stored off the Project Site. Trade Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed ten percent (10%) of the Trade Contract Amount at any time without written approval of the Authority;
- .2 Title to such materials shall be vested in the Authority, as evidenced by documentation satisfactory in form and substance to the Authority, including recorded financing statements, UCC filings, and UCC searches;
- .3 With each Application for Payment, the Trade Contractor shall submit to the Authority a written list identifying each location where materials are stored off the Project Site and the value of materials at each location. Trade Contractor shall procure insurance for materials stored off the Project Site in an amount not less than the total value thereof and shall provide satisfactory evidence of such insurance coverage along with the Application for Payment for such materials;
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project Site;
- .5 Representatives of the Authority and the Lender's designees shall have the right to make inspections of the storage areas at any time; and
- .6 Such materials shall be (a) protected from diversion, destruction, theft, and damage to the satisfaction of the Authority, (b) specifically marked for use in the Trade Contractor Work, and (c) segregated from other materials at the storage facility.

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

- .1 To the extent of payments received from the Authority, the Trade Contractor further expressly undertakes to defend and indemnify the Authority and the Indemnitees, at the Trade Contractor's sole expense, with independent counsel of the indemnified party's choice, against any actions, lawsuits, or proceedings brought against the Authority or any Indemnitee as a result of Claims or liens filed against the Trade Contractor, the Trade Contractor Work, the Project Site, any improvements thereon, or any portion of the property of the Authority or any Indemnitee. To the extent of payments received from the Authority, the Trade Contractor hereby agrees to indemnify and hold the Authority and all Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

- .2 The Authority shall release any payments withheld due to a Lien if the Trade Contractor obtains security acceptable to the Authority or a bond which is: (a) issued by a surety acceptable to the Authority, (b) in form and substance satisfactory to the Authority, and (c) in an amount not less than One Hundred Fifty percent (150%) of such Lien claim. By posting a bond or other acceptable security, however, the Trade Contractor shall not be relieved of any responsibilities or obligations under this **Paragraph 11**, including, without limitation, the duty to defend and indemnify the Authority and all Indemnitees. The cost of any premiums incurred in connection with such bonds or security shall be the responsibility of the Trade Contractor and shall not be reimbursable.

**11.6 Approval of Applications for Payment.** Based upon Applications for Payment submitted by the Trade Contractor and as approved by the Authority, the Authority shall make payment to the Trade Contractor. The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month, or as otherwise agreed to between the Authority and Trade Contractor in writing. Provided that a Trade Contractor Application for Payment is approved for full or partial payment, the Authority shall make payment of the approved amount to the Trade Contractor not later than forty-five (45) Days after the Authority has approved Application for Payment. Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Trade Contractor and approved by the Authority in accordance with this Trade Contract Agreement. The Application for Payment shall show the percentage completion of each portion of the Trade Contractor Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the percentage of that portion of the Trade Contractor Work which has actually been completed. Subject to other provisions of the Trade Contract Agreement, the amount of each progress payment shall be computed as follows:

**11.6.1** Determine the portion of the Trade Contract Amount properly allocable to completed Trade Contractor Work as determined by the Authority.

**11.6.2** Add that portion of the Trade Contract Amount properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Trade Contractor Work, or, if approved in advance by the Authority, suitably stored off the Project Site at a location agreed upon in writing.

**11.6.3** Subtract retainage of five percent (5%). The Authority may in its sole discretion approve any deviation from this requirement.

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

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

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

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

**11.7.1** Defective Trade Contractor Work not remedied;

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

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

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

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

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

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

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

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

**11.10 [RESERVED]**

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

**11.12 Reimbursement.** If the Authority is entitled to reimbursement or payment from the Trade Contractor under or pursuant to the Trade Contract Documents such payment shall be made promptly by the Trade Contractor upon demand from the Authority. Notwithstanding anything

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

**11.13 Advance Payments.** Except with the Authority's prior written approval, the Trade Contractor shall not authorize advance payments to Suppliers for materials that have not been delivered to and properly stored at the Project Site.

**11.14 Reliance on Information.** In taking action on the Trade Contractor's Application for Payment, the Authority shall be entitled to rely on the accuracy and completeness of the information furnished by the Trade Contractor and shall not be deemed to represent that the Authority has made a detailed examination, audit or arithmetic verification of the documentation submitted by the Trade Contractor or other supporting data, that the Authority has made exhaustive or continuous on-site inspections, or that the Authority has made examinations to ascertain how or for what purposes the Trade Contractor has used amounts previously paid. If requested by the Authority, the Authority's accounting representative, acting in the sole interest of the Authority, will perform such examinations, audits and verifications.

**11.15 Certifications.** The Trade Contractor is required to certify that all amounts owed and requested under the Application for Payment are due to the Trade Contractor, are accurate and correct, and that all of the Trade Contractor Work completed to the date of the Application for Payment has been completed in accordance with the Trade Contract Agreement. The Trade Contractor will be responsible for any errors or inaccuracies in the Application for Payment. The Trade Contractor, and all Subcontractors or other Persons included for payment under the Trade Contractor's Application for Payment, will be required to certify that they have no Knowledge of any Claims outstanding for any of the Trade Contractor Work completed to the date of the Trade Contractor's Application for Payment, except those Claims that are properly preserved in strict accordance with the Trade Contract Agreement.

**11.16 Subcontractor Work.** Notwithstanding the provisions of **Paragraph 11.15** and notwithstanding the wording of such certificates, the Trade Contractor shall ensure that each Subcontractor's work is satisfactory and in good order pursuant to the Trade Contract Documents pending the issuance of a final Certificate of Payment and the Trade Contractor shall be responsible for ensuring that the correction of defects or Trade Contractor Work not performed regardless of whether or not such defects were apparent when such certificates were issued.

## **12. Final Completion and Final Payment**

**12.1 Final Completion.** Upon receipt of written notice that the Trade Contractor Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Authority will promptly make such inspection and, when the Authority determines that the Trade Contractor Work is acceptable under the Trade Contract Documents, the Trade Contractor Work has been fully performed and the Trade Contractor has achieved Final Completion, the Authority will issue the final Certificate for Payment stating the entire balance found to be due the Trade Contractor and noted in said final Application for Payment is due and payable. All warranties required under the Trade Contract Agreement shall be provided as part of the final Application for Payment. The final Certificate for Payment will not be issued until all warranties have been received and accepted by the Authority.



**12.2 Final Payment.** Final Payment shall be made by the Authority to the Trade Contractor when (a) the Trade Contractor has achieved Final Completion, except for the Trade Contractor's responsibility to correct defective or nonconforming Work and to satisfy other requirements, if any, which necessarily survive Final Payment; (b) a final Application for Payment has been submitted by the Trade Contractor and reviewed by the Authority's accountants; and (c) a final Application for Payment has then been approved in writing by the Authority. The Authority shall make such Final Payment, including any remaining retainage, if all of the Trade Contractor's responsibilities have been satisfied (otherwise any remaining retainage shall be released upon satisfaction of all requirements) not more than ninety (90) Days after approval by the Authority of the final Application for Payment, or as required by Applicable Law. No Final Payment shall be issued until all final Contract Revisions have been issued and executed with each final Change Order and Trade Contractor has provided the Authority with a detailed list of all Claims that are still unresolved at the time Final Payment is requested. The amount of the Final Payment shall be calculated as follows:

**12.2.1** Take the Trade Contract Amount;

**12.2.2** Subtract amounts that the Authority withholds in accordance with the Trade Contract Agreement; and

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

### **13. Safety**

**13.1 Safety Programs.** The Trade Contractor shall have a Project Safety Program consistent with the Standard of Care and all applicable requirements set forth herein. The Trade Contractor shall be bound by and adhere to any safety program the Construction Manager may have. If the Construction Manager reviews, monitors and/or coordinates with the Trade Contractor's safety programs it shall not relieve the Trade Contractor from controlling its safety programs. The Trade Contractor shall also have controlling employer responsibility for the safety programs and precautions applicable to its Trade Contractor Work and the activities of other work in areas designated as within the control of Trade Contractor. Furthermore, the Trade Contractor agrees that the Trade Contractor will include reasonable precautions for safety of: (a) its employees on the Project and other Persons who may be affected thereby; and (b) all Project Participants. The Trade Contractor will also take reasonable precautions for the protection of the Trade Contractor Work, third-party materials and equipment stored on the Project Site in accordance with the Trade Contractor's direction, and other property at or on Adjacent Property to the Project Site.

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

**13.1.2** In the event the Trade Contractor encounters on the Project Site existing material reasonably believed to be Hazardous Materials which is not part of or a result of the Trade Contract Work and has not been rendered harmless, the Trade Contractor shall immediately stop the Trade Contractor Work in the area affected and report the condition to the Authority in writing. The Trade Contractor Work in the affected area shall not thereafter be resumed except by written agreement of the Authority, and Trade Contractor, if in fact the material is a Hazardous Material and has not been rendered harmless. The Trade Contractor Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless.

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

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

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

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

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

#### **13.4 Emergencies**

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

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

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

**14.1 Required Insurance.** Before beginning its Trade Contractor Work, the Trade Contractor shall obtain and maintain the Required Insurance as set forth in **Appendix B**, and fully comply

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

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

**14.1.1** The Trade Contractor shall, for the protection and benefit of the Authority and the Indemnitees, procure, pay for and maintain in full force and effect, at all times during the performance of the Trade Contractor Work until Final Completion and acceptance of the Trade Contractor Work or for such duration thereafter as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Authority and in form and substance reasonably satisfactory to the Authority which afford the coverages set forth in **Appendix B** hereto. The Authority does not in any way represent that the insurance or limits of insurance specified herein are sufficient or adequate to protect the Trade Contractor, but are merely minimums. If the Trade Contractor procures insurance with limits greater than as the limits specified in **Appendix B**, those greater limits shall apply. In addition to what is specified in this **Paragraph 14** and **Appendix B**, Contractor shall take such steps as it may deem necessary to insure itself against all special and unusual hazards peculiar to this Project.

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

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

**14.1.4 [RESERVED]**

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

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

**14.1.7** The Trade Contractor shall cause each first-tier Subcontractor to (a) provide insurance in accordance with the terms and conditions of Trade Contractor's standard Subcontract and reasonably satisfactory to the Authority, and (b) name the Construction

Manager, Architect, Authority and the Indemnitees as additional insureds under the Subcontractor's Commercial General Liability Policy. The additional insured endorsement included on the Subcontractor's Commercial General Liability Policy shall state that coverage is afforded the additional insured with respect to claims arising out of ongoing and completed operations performed by or on behalf of the Subcontractor. With the exception of any coverage provided under an Owner Controlled Insurance Program, if the additional insureds have other insurance which is applicable to the Project, such other insurance shall be, for the purposes hereof, on an excess or contingent basis. The amount of the insurer's liability under Subcontractor's insurance policy shall not be reduced by the existence of such other insurance.

#### **14.2 Authority's Liability Insurance**

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

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

#### **14.3 Property Insurance**

**14.3.1** Before any portion of the Trade Contractor Work is commenced, the Trade Contractor shall purchase and maintain property insurance for the Trade Contractor Work at the Project Site or portions thereof and materials stored off the Project Site or being shipped to the Project Site as set forth in Appendix B.

**14.3.2 [RESERVED]**

**14.3.3 [RESERVED]**

**14.3.4 [RESERVED]**

**14.3.5 [RESERVED]**

**14.3.6 [RESERVED]**

**14.3.7** The Authority, Architect, Trade Contractor and Construction Manager waive all rights of subrogation and claims of any sort or kind against each other and any of their respective Subconsultants, Subcontractors, Suppliers, Sub-Subcontractors of all tiers, agents, and employees, whether directly or indirectly through any means through their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees, for loss or damages caused by fire or other named perils to the extent covered by property insurance obtained pursuant to this **Paragraph 14.3** or other property insurance applicable to the Trade Contractor Work, except such rights as they have to proceeds of such insurance held by the Authority as fiduciary. The Trade Contract Documents hereby require of the Authority, Architect, Construction Manager, and Trade Contractors, if any, and their Subconsultants, Subcontractors, Sub-Subcontractors of all tiers, agents, and employees of any of them, by appropriate written agreement, to include similar waivers of subrogation each in favor of other parties enumerated herein. All insurance policies required in the Trade Contract Documents shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a Person even though that Person would otherwise have a duty of indemnification,

contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the Person or entity had an insurable interest in the property damaged. The Trade Contractor shall provide to the Authority, prior to the commencement of the Trade Contractor Work, evidence that all of the insurance policies required herein contained an appropriate endorsements as provided in this **Subparagraph 14.3.7**.

**14.3.9 [RESERVED]**

**14.3.10 [RESERVED]**

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

**14.3.12** Any deductibles required to be paid for Claims made by the Trade Contractor or Subcontractors shall be paid by the claiming Trade Contractor or claiming Subcontractor.

**14.4 Bonds**

**14.4.1** Pursuant to Minnesota Statutes §§ 574.26 - 574.32 and the Act, the Trade Contractor is required to provide a Payment Bond and a Performance Bond each in an amount equal to one-hundred percent (100%) of the Trade Contract Amount and in the form of **Exhibit 5** hereto and from a surety or sureties acceptable to the Authority. If after the giving of the bonds the Trade Contract Amount is increased, for any reason, the Authority may require additional bonds, the amount of which shall be not less than the amount of the increase in the Trade Contract Amount, and if the additional bonds are not furnished within ten (10) Days after demand, the Trade Contractor Work shall cease until the additional bonds are furnished.

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

- .1 [RESERVED]**
- .2** Bonds shall be executed by a responsible surety licensed and authorized to do business in the State of Minnesota, with a Best's Key Rating Guide's rating of no less than A:X and shall remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Trade Contractor Work and the payment of any disputed amounts, whichever time period is longer;
- .3** The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Trade Contract Amount and the Performance Bond shall guarantee Trade Contractor will satisfactorily perform each and every part of the Trade Contractor Work, including all guarantees and warranties required;
- .4** Late completion shall be considered a failure of performance and any liquidated damages owed by the Trade Contractor as a result of late completion shall be covered by Trade Contractor's performance bond; and

- .5 Every Bond under this **Subparagraph 14.4.3** must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

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

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

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

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

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

## **14.5 General Insurance Requirements**

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

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

**14.5.3 - .4** [RESERVED]

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

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

**15. Uncovering and Correction of Trade Contractor Work.**

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

**15.2 Correction of Trade Contractor Work**

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

**15.2.2** Within one (1) year after the date of Substantial Completion of the Trade Contractor Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Trade Contract Agreement, if any of the Trade Contractor Work is found to be not in accordance with the requirements of the Trade Contract Agreement, the Trade Contractor shall correct it promptly after receipt of written notice from the Authority to do so unless the Authority has previously given the Trade Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Trade Contractor Work first performed after Final Completion by the period of time between Final Completion and the actual performance of the Trade Contractor Work. This obligation under this **Subparagraph 15.2.2** shall survive Final Completion and acceptance of the Trade Contractor Work under the Agreement and termination of the Agreement. The Authority shall provide such notice promptly after discovery of the improper conditions.

**15.2.3** If the Trade Contractor fails to correct nonconforming Trade Contractor Work within a reasonable time, the Authority may correct it. If the Trade Contractor does not proceed with correction of such nonconforming Trade Contractor Work within a reasonable time fixed by written notice from the Authority, the Authority may remove it



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

**15.2.4** The Trade Contractor shall be responsible for all reasonable and direct costs of the Authority resulting from corrections in the Trade Contractor Work for which Trade Contractor is responsible and shall be further responsible for any Design Services which are caused or necessitated by errors, omissions, inconsistencies or other damages caused by the Trade Contractor and for which the Trade Contractor is responsible.

**15.2.5** Nothing contained in this **Paragraph 15.2** shall be construed to establish a period of limitation with respect to other obligations that the Trade Contractor might have under the Trade Contract Agreement. Establishment of the time period of one (1) year as described in **Subparagraph 15.2.2** relates only to the specific obligation of the Trade Contractor to correct Trade Contractor Work, and has no relationship to the time within which the obligation of the Trade Contractor to comply with the Trade Contract Agreement may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Trade Contractor's liability with respect to the Trade Contractor's obligations other than specifically to correct its Trade Contractor Work.

## **16. Termination or Suspension by Authority**

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

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

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

- .1 cease operations as directed by the Authority in the notice;
- .2 take actions necessary, or that the Authority may direct, for the protection and preservation of the Trade Contractor Work; and
- .3 except for Trade Contractor Work directed to be performed prior to the effective date of suspension or termination stated in the notice, suspend

or terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders.

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

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

## **17. General Provisions**

**17.1 Nondiscrimination.** In connection with the performance of its Trade Contractor Work, the Trade Contractor agrees not to illegally discriminate against any employee or applicant for employment for any reason, including: age, race, sex, national origin, ancestry, religion, or color. This provision shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.

**17.2 Successors and Assigns.** The Authority and Trade Contractor each bind themselves, their partners, successors, permitted assigns, and legal representatives to the other Party to this Trade Contract Agreement and to the partners, successors, permitted assigns, and legal representative of such other Party with respect to covenants of this Trade Contract Agreement. Notwithstanding anything to the contrary in this Trade Contract Agreement, it is acknowledged and agreed that the Authority shall have the right to assign all its rights and duties under this Trade Contract Agreement without the consent of Trade Contractor to third parties, including the Team and the Construction Manager. The Trade Contractor shall execute all consents reasonably required to facilitate such assignment, provided, such assignment by the Authority shall not relieve the Authority of its obligations under this Trade Contract Agreement unless Trade Contractor agrees to a novation of the same. This Trade Contract Agreement may not be assigned by Trade Contractor without the prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion.

**17.3 Inspection.** Inspection of the progress, quantity, or quality of the Trade Contractor Work done by the Authority, any Authority representative, any Governmental Agency, the Architect, or any inspector, shall not relieve the Trade Contractor of any responsibility for the compliance of the Trade Contractor Work with the Trade Contract Documents. The Authority or its approved representative shall have access to the work site and all Trade Contractor Work. No supervision or inspection by the Authority's representative, nor right of the Authority to act, nor any other actions taken by the Authority's representative shall relieve the Trade Contractor of any of its obligations under the Trade Contract Documents nor give rise to any duty on the part of the Authority. If any of the Trade Contractor Work is required to be inspected or approved by any Governmental Authority, the Trade Contractor shall cause such inspection or approval to be

performed. No inspection performed or failed to be performed by the Authority hereunder shall be a waiver of any of the Trade Contractor's obligations hereunder or be construed as an approval or acceptance of the Trade Contractor Work or any part thereof.

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

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

**17.5 Cost Overruns.** Trade Contractor agrees and acknowledges that the Act requires the Authority to procure project construction in a manner that any cost overruns are the responsibility of the proposer and not the Authority or the State. Accordingly, Trade Contractor agrees and acknowledges that as the successful proposer, Trade Contractor is solely responsible for any cost overruns that may occur on the Project as may apply to the Trade Contractor Work in excess of the Trade Contract Amount as modified in accordance with and as allowed by the Trade Contract Documents, however caused, as the Authority has no authority to accept liability for cost overruns in contravention of the Act.

**17.6 Governing Law, Venue, and Jurisdiction.** The laws of the State of Minnesota, without giving any effect to conflicts of law provisions, shall govern and construe this Trade Contract Agreement. Each Party to this Trade Contract Agreement (a) agrees that except for those Claims or disputes which are subject to dispute resolution requirements set forth in **Paragraphs 6.2 to 6.4** of this Trade Contract Agreement, any suit, action, or other legal proceeding arising out of the Trade Contractor Work, this Trade Contract Agreement, any related agreements, or any of the transactions contemplated hereby or thereby shall be brought in the courts of the State of Minnesota, Fourth Judicial District, Hennepin County District Court; (b) consents to the jurisdiction of such court in any such suit, action, or proceeding; and (c) waives any objection which it may have to the venue of any such suit, action, or proceeding in such court.

**17.7 Project Labor Agreement.** The Trade Contractor has received, reviewed, and agrees to comply with the Project Labor Agreement for the Project which is attached hereto as **Exhibit 6** if applicable.

**17.8 Warranty.**

**17.8.1** The Trade Contractor warrants to the Authority that the Trade Contractor Work will be of good quality and new unless otherwise required or permitted by the Trade Contract Documents, that the Trade Contractor Work will be free from defects. The Trade Contractor represents and warrants to the Authority that its design and materials and workmanship, including its construction means, methods, procedures, and techniques necessary to perform the Trade Contractor Work, and its use of materials, selection of equipment, and requirements of product manufacturers are and shall be consistent with:

(a) good and sound practices within the construction industry; (b) generally prevailing and accepted industry standards applicable to the Trade Contractor Work; (c) requirements of any warranties applicable to the Trade Contractor Work; and (d) all Applicable Laws. Trade Contractor Work not conforming to these requirements, including Substitutions not properly approved and authorized, shall be considered defective, and promptly after notification of non-conformance shall be repaired or replaced by Trade Contractor with Trade Contractor Work conforming to this warranty. The Trade Contractor's warranty excludes remedy for damage or defect caused by normal wear and tear under normal usage. If required by the Authority, the Trade

Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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

**17.9.1** If to the Construction Manager, addressed to:

| [insert]

**17.9.2** If to the Authority, addressed to:

Minnesota Sports Facilities Authority  
511 11th Avenue South, Suite 401  
Minneapolis, MN 55415  
Attention: [insert]  
Fax: 612-332-8334

with a copy to:

Dorsey & Whitney, LLP  
Suite 1500  
50 South Sixth Street  
Minneapolis, MN 55402-1498  
Attention: Jay R. Lindgren  
Fax: 612-340-2868

with a copy to:

Fabyanske, Westra, Hart & Thomson, PA  
333 South Seventh Street, Suite 2600  
Minneapolis, MN 55402  
Attention: Dean B. Thomson  
Fax: 612-359-7602

with a copy to:

Minnesota Vikings Football, LLC  
9520 Viking Drive  
Eden Prairie, MN 55344  
Attention: Kevin Warren  
Chief Operating Officer  
Fax: 952-828-6513

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

with a copy to:

Briggs and Morgan, P.A.  
2200 IDS Center

80 South Eighth Street  
Minneapolis, MN 55402  
Attention: Mike Grimes and  
Matt Slaven  
Fax: 612-977-8650

with a copy to:

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

**17.9.3** If to the Trade Contractor, addressed to:

**insert**

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

**17.10 Public Project.** The Parties agree and acknowledge that the Project is a public project and the Project will be used for public purposes and all of the Trade Contractor Work hereunder is in furtherance of a public project.

**17.11 Prevailing Wages.** The Trade Contractor shall pay the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay determined for this Project, and will incorporate into this Trade Contract Agreement the applicable wage determinations for Trade Contractor Work along with language from the commissioner of the state Department of Labor and Industry that will notify the Trade Contractor and its Subcontractors of the applicability of Minn. Stat. §§ 177.41 to 177.44 to this Project. The Trade Contractor shall comply with prevailing wage requirements under Minn. Stat. §§ 177.41 to 177.43 or as otherwise required by the Trade Contract Documents or Applicable Laws. The Authority shall demand and the Trade Contractor and its Subcontractors shall furnish to the Authority copies of any or all payrolls no more than fourteen (14) Days after the end of each pay period and said payrolls must contain all the data required by Minn. Stat. § 177.30. Trade Contractor shall also utilize the LCPTracker online labor tracking report at the request of the Authority. The Authority may also examine all records relating to wages paid to laborers or mechanics on work to which Minn. Stat. §§ 177.41 to 177.43 apply.

**17.12 Confidentiality**

**17.12.1** The Trade Contractor shall keep strictly confidential all Confidential Information concerning and relating to the Trade Contract Agreement and the Project. The Trade Contractor, its officers, agents, owners, partners, employees, volunteers, and Subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, ch. 13 (the “MGDPA”) and all other Applicable Laws relating to data privacy or confidentiality, and as any of the same may be amended. The Trade Contractor agrees to defend, indemnify, and hold harmless the Indemnitees from and against any claims resulting from the unlawful disclosure and/or use of such protected data by the Trade Contractor or the officers, agents, owners, partners, employees, volunteers, assignees, or Subcontractors of the Trade Contractor, or other noncompliance with the requirements of this **Subparagraph 17.12**. The Trade Contractor agrees to promptly notify the Authority and Team if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA.

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

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

### **17.13 Trade Secrets, Trademarks and Trade Names**

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

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

sole discretion to release such information, time its release, and approve its form and content prior to release.

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

#### **17.14 Press Releases and Other Promotional Materials**

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

**17.14.2** After completion of the Project, the Trade Contractor and Project Team may use images of the Project and explanatory text in the Trade Contractor's and Project Team member's marketing and promotional materials, subject to the Authority's and the Team's written approval prior to the Trade Contractor's or Project Team member's first use of such materials; provided, however, that the Trade Contractor's and Project Team member's marketing and promotional materials should not include any of the Authority's or the Team's Confidential Information.

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

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

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

Contractor Work. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Authority's copyright or other reserved rights.

**17.16 Third-Party Beneficiaries.** Nothing contained in this Trade Contract Agreement shall create or is intended to create a contractual relationship with, or a cause of action in favor of, any third-party against the Authority or any of the Indemnitees. Notwithstanding the foregoing, the Parties hereto acknowledge and agree to the third-party beneficiary rights established in **Paragraph 17.18** herein.

**17.17 Independent Contractor.** The Trade Contractor expressly acknowledges that it is an independent contractor and that it is not the representative or agent of the Authority or Team. Nothing contained in this Trade Contract Agreement shall be construed as constituting a joint venture or partnership between the Trade Contractor and the Authority or the Team. The Trade Contractor shall have no authority to act on behalf of the Authority. Under no circumstances shall Trade Contractor contract, negotiate or make commitments concerning the Project with any Governmental Authority or other authority with jurisdiction over the Project without the Authority's prior written authorization.

**17.18 Third-Party Beneficiaries.** It is expressly agreed and understood that all of the Indemnitees are intended third-party beneficiaries of all the representations, warranties and covenants made by the Trade Contractor in the Trade Contract Documents, including without limitation the promises of the Trade Contractor to perform and complete the Trade Contractor Work. The rights of third-party beneficiaries as described herein shall be consistent with the Trade Contract Documents. The responsibilities and liabilities of the Trade Contractor toward such third-party beneficiaries shall be consistent with the Trade Contract Documents.

**18. Entire Agreement**

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

[THIS SPACE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGE FOLLOWS]



**THIS TRADE CONTRACT AGREEMENT** is entered into as of the day and year first written above.

**AUTHORITY:**

\_\_\_\_\_  
By:  
Title: Its Chair

**AUTHORITY:**

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

**TRADE CONTRACTOR:**

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

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

**DEFINITIONS**

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

**“Act”** shall mean 2012 Minnesota Laws, Chapter 299, as enacted or hereafter amended or supplemented, and including any successor law, providing for, among other things, the construction, financing, operation, and long-term use of a multi-purpose stadium and related infrastructure as a venue for the National Football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota.

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

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

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

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

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

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

**“Architect”** such firm of licensed architects and/or engineers as may be designated by Authority from time to time. For the purpose of the Trade Contract Agreement and the Trade Contract Documents, the Trade Contractor shall be deemed the Architect of any design/build Trade Contractor Work to be performed hereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Construction Manager**” shall mean any person or legal entity with whom the Authority has contracted to serve as contract manager, project manager, and/or construction manager for the work work covered by this Trade Contract Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Person”** shall mean: (a) an individual, sole proprietorship, corporation, limited liability company, partnership, joint venture, joint

stock company, estate, trust, limited liability association, unincorporated association or other entity or organization; (b) any Federal, State, county or municipal government (or any bureau, department, agency or instrumentality thereof); and (c) any fiduciary acting in such capacity on behalf of any of the foregoing.

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

**“Project”** shall mean the work provided for in this Trade Contract Agreement and any related work, including design work and work performed under other related Trade Contract Agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Substantial Completion Date”** or **“Date of Substantial Completion”** shall mean the date identified in the Substantial Completion

Certificate when the Trade Contractor Work (or a designated portion thereof) is Substantially Complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Trade Secret**” shall mean any and all information that comes into the possession, custody or control by, through, from, or on behalf of the Authority or Team without regard to form, including, without limitation, any technical or non-technical data, formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, financial plan, product plan, list of actual or potential customers or suppliers, that is not commonly known by or available to the public and which information: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the



circumstances to maintain its secrecy.

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

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

**INSURANCE PROVISIONS OF THE TERMS OF DESIGN AND CONSTRUCTION**

**APPENDIX B**

**TRADE CONTRACTOR'S INSURANCE REQUIREMENTS**

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

**1.1 Commercial General Liability Insurance.**

**1.1.1 Combined single limit of not less than:**

\$1,000,000	Each Occurrence
\$2,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$100,000	Fire Legal Liability
\$10,000	Medical Payments

**1.1.2 Coverage Required:**

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

Coverage shall be written on ISO form CG 00 01 12 04 or an equivalent form. Insurance is to be on an occurrence form insuring bodily injury and property damage against the hazards of: construction operations, subcontractor and independent contractor, and shall include an aggregate limit per job site endorsement.

**1.2 Business Auto Liability Insurance.**

**1.2.1 Combined Single Limit of:**

\$1,000,000 each Occurrence Bodily Injury and Property Damage

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

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

**1.3 Workers' Compensation Insurance.**

**1.3.1 Workers' Compensation Limits:** Statutory

**1.3.2 Employers' Liability Limits:**

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

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

**1.3.4** Waiver of Subrogation Endorsement in favor of the Authority.

**1.4 Excess Liability Insurance with Limits of Not Less Than:**

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

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

**1.5 Contractor's Professional Liability.**

\$1,000,000	Limit of Insurance
\$1,000,000	Annual Aggregate

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

**1.6 [RESERVED]**

**1.7 Property Insurance/Builder's Risk**

Trade Contractor shall insure its own property and equipment (owned, rented or borrowed) including but not limited to tools, materials, supplies, equipment, forms, scaffolding towers, staging, bunkhouses, and other temporary structures including their contents. Trade Contractor shall require its Subcontractors to similarly insure their property and equipment. Trade Contractor shall also insure its work on the project and that of its Subcontractors and any materials and equipment that will be incorporated into its work or that of its Subcontractors through Builder's Risk insurance which coverage shall be on an "all risk" basis (with only industry standard exclusions) and shall be kept in force throughout the duration of the Trade Contract Agreement for matters that arise out of or relate to the Trade Contractor Work. The Authority shall be named as an additional insured on the policy as shall Trade Contractor's Subcontractors. The limit of the coverage shall be no less than the Trade Contract amount set forth at Exhibit 2.

2. The Authority does not represent or warrant that coverage and limits of the Required Insurance will be adequate to protect the Trade Contractor, and such coverage and limits shall not be deemed as a limitation on the Trade Contractor's liability under the indemnities provided to the Authority and Indemnitees in the Trade Contract Agreement or any other provision of the Trade Contract Documents.
3. The Trade Contractor represents and warrants that the coverage and limits of the Required Insurance are the coverage and limits currently maintained by the Trade Contractor.
4. Prior to commencing the Trade Contractor Work, the Trade Contractor shall furnish the Authority with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing that the Trade Contractor maintains all Required Insurance.
  - 4.1 All certificates shall contain a provision that coverages afforded under the policies will not be cancelled, non-renewed, materially changed, or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Authority. The Trade Contractor shall immediately furnish the Authority copies of all endorsements that are subsequently issued amending coverage or limits.
  - 4.2 The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the cancellation or material change of any insurance referred to therein.
  - 4.3 Failure of the Authority to demand such certificate or other evidence of full compliance with the Required Insurance or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Trade Contractor's obligation to maintain such insurance.
5. The Authority shall have the right, but not the obligation, to prohibit the Trade Contractor from entering the Project Site until such certificates or other evidence that the Required Insurance has been duly placed in compliance with this **Appendix B**. The Trade Contractor shall be responsible for any delays arising out of the Trade Contractor's failure to comply with this **Appendix B**.
6. If the Trade Contractor fails to maintain any or all of the Required Insurance, then, in addition to any other rights or remedies available to the Authority under the Agreement, the Authority shall have the right, but shall not be obligated, to (a) terminate the Trade Contract Agreement, or (b) purchase such insurance for the Trade Contractor in which event the Trade Contractor shall reimburse the Authority or provide for the cost thereof, plus ten percent (10%) as an administrative charge.
7. With respect to the Required Insurance, which the Trade Contractor is obligated to maintain after Substantial Completion, an additional certificate(s) evidencing such coverage shall be promptly provided to the Authority when requested.
8. Trade Contractor shall provide certificates of insurance evidencing the insurance coverage and policy limits required above prior to commencement of the Trade Contractor Work and thereafter shall provide insurance certificates or certified copies of insurance policies as may be specified by the Authority within ten (10) Days of the Authority's written request for said certificates or copies.
9. Trade Contractor will require Subcontractors to provide insurance in accordance with the terms and conditions of its standard Subcontract Agreement. Trade Contractor shall include the above additional insured and waiver of subrogation requirements in all of its Subcontracts, unless otherwise agreed to in writing by the Authority. The Trade Contractor shall be responsible for collecting certificates of insurance and monitoring insurance coverage of its Subcontractors and all lower tier Sub-Subcontractors to verify that the required coverage is maintained as required. All Subcontractors providing professional services shall be required to provide professional liability insurance. In addition, all Subcontractors shall include the same indemnification of the Authority and Indemnitees as provided in the Trade Contract Agreement.
10. Trade Contractor shall secure all Required Insurance from domestic insurer(s) authorized to do business in the State of Minnesota and reasonably satisfactory to the Authority with: (a) a claims paying ability of not less than "AA" (or the equivalent) by Standard & Poors and one other Rating Agency satisfactory to the Authority; and (b) "A:X" or better financial strength rating by AM Best. Trade Contractor shall promptly notify the Authority of any material changes in coverage for all insurance required herein. All coverages except Professional Liability insurance shall be occurrence based. Insurance shall contain such provisions as the Authority deems reasonably necessary or desirable to protect its interest, including endorsement stating that neither the Trade Contractor, the Authority, nor any other party shall be deemed a co-insurer. The Trade Contractor shall pay the premiums for all insurance when due and payable.

---

**EXHIBIT 1**  
**DESCRIPTION OF TRADE CONTRACTOR WORK**

---

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

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

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

**1. Design Services.**

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

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

## **2. Construction Services.**

Trade Contractor will provide all labor, materials and equipment necessary to survey, design, engineer, fabricate, ship and install the Trade Contractor Work.

### **Design**

Trade Contractor will provide design services to establish aesthetic and structural specifications for the Trade Contractor Work, including required supporting structure and attachment elements. Scope includes all revision and refinement labor time to reach final acceptance and approval by the Authority and Team.

### **Project Management**

Trade Contractor will provide dedicated project management staff time from project execution to final punch list and acceptance of completed Trade Contractor Work by the Authority and Team. Trade Contractor will coordinate all Trade Contractor Work with the Authority, Team, Construction Manager, Architect, other contractors, and all members of the Project Team.

### **Site Survey and Scope Review**

Before generating any drawings or documents, Trade Contractor will conduct a full site survey to confirm that all existing conditions are adequate to meet the design intent. Trade Contractor will request and coordinate delivery for its review of drawings or other documentation showing or describing the existing conditions, coordinating trades and proposed work proposed to be provided by others. Any specific structural or other modifications to the Stadium structure will be immediately communicated to the Authority and Team for evaluation.

### **Shop Drawings**

Trade Contractor will generate for submittal and approval complete Shop Drawings defining each of the elements of Trade Contractor Work to be fabricated and installed by Trade Contractor. These Drawings will show the location/placement of each component of the Trade Contractor Work and will detail construction methods, “hardening” of components or methods, materials, colors, installation methods, and any applicable coordination information for each element type for its own Trade Contractor Work and with the Work of other adjacent contractors. Drawings will be based on existing Design Documents, site survey, and any further information received during the design phases, and as coordinated with the Architect, Authority, and Team. Shop Drawings are required for each component type and include: specially-prepared technical data for this Project, drawings, diagrams, schedules, templates, patterns, instructions, measurements, and similar information not in standard print form.

### **Material/Control Samples**

Trade Contractor will submit samples of each material type, and finish and paint color(s), including both fabricated and un-fabricated physical examples of materials, products and units of work. Samples may be both complete units and smaller portions of units of work, either for limited visual inspection or, where indicated, for more detailed testing and analysis.

### **Engineering Calculations**

Engineering calculations will be provided with the Shop Drawings. Engineering calculations will contain information showing that each component and attachment/installation methods will meet the load requirements. Trade Contractor will cause all engineered drawings and documents to be prepared and stamped by a Professional Engineer licensed in Minnesota.

### **Mock-ups**

After approval of Shop Drawings and material samples, and only if requested by the Authority and Team, Trade Contractor will construct mock-ups to verify constructability of fabricated components and illustrate final product for review by the Authority and Team. Mock-ups will be constructed in the same manner as the final product using the same materials and processes to ensure that the requirements of the project are being met before Trade Contractor commences production.

### **Shop Testing**

Fabricated components will be shop tested prior to shipment or delivery to the Project Site.

### **Material Procurement**

The Trade Contractor will order and procure materials as required to maintain the Project schedule. If alternate materials are requested by the Authority or Team, Trade Contractor will advise of any alleged time impacts.

### **Shipping**

All fabricated components will be crated for shipment to the Project Site or off-site storage in a coordinated sequence to facilitate the installation process. All components will be crated in a manner to prevent any damage during transit or storage.

### **Installation**

Trade Contractor will provide onsite installation supervision as required for the unpacking and installation phase of the Trade Contractor Work. Trade Contractor will protect its Work from public access during construction. Trade Contractor will either provide its own safe storage of materials and equipment, toilet facilities, dumpsters/waste removal, and portable cranes, or arrange for the use of the same from the Construction Manager.

### **Project Closeout**

Trade Contractor will prepare and submit all closeout components, including, but not limited to, assembly manuals, maintenance manuals, and closeout package, in printed and PDF format. Documents shall include approved shop drawings annotated with revisions that reflect any changes in the field. Product data are to be provided to the Authority and Team in the form of an Operations and Maintenance Manual. Product data shall include standard printed information on materials, products and systems, including material safety data sheets (MSDS), and not specially prepared for the Trade Contractor Work.

**Scope Components and Descriptions**

**Optional Alternates**



---

**EXHIBIT 2**  
**TRADE CONTRACT AMOUNT**

---

Trade Contractor acknowledges that this Trade Contract Agreement is a fixed-sum contract in the amount of [ \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$ \_\_\_\_\_)] (the “**Trade Contract Amount**”) for all Trade Contractor Work. The Trade Contract Amount shall be complete and total compensation for all of Trade Contractor’s fees and expenses including, but not limited to: (i) all wages, benefits and related taxes either direct or subcontracted, (ii) all shop expenses, design fees, general overhead, taxes, telecommunications and any other costs of business or miscellaneous expenses; (iii) all travel expenses and related costs, including but not limited to, airfare, ground transport, accommodations, meals, and incidental travel expenses for Trade Contractor, its staff and associated workers, (iv) all materials whether directly purchased or purchased by subcontractors, (v) insurance coverage at limits required in this Trade Contract, and (vi) all crating, packing, shipping, transport and drayage costs, of whatsoever kind, for the Trade Contractor Work and for any and all tools and materials which Trade Contractor may need to perform its Trade Contract Work.

---

**EXHIBIT 3  
EQUITY PLAN**

---

[Authority to Submit]

---

**EXHIBIT 4**  
**CONSTRUCTION SCHEDULE**

---

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

Final Completion of the Trade Contractor Work shall be deemed to have occurred only after completion of all the Trade Contractor Work and acceptance of it by the Authority.

The Date of Substantial Completion is described in more detail below:

**Substantial Completion**

Milestone Dates of the Trade Contractor Work that must be complete in accordance herewith are outlined on the Outline of Construction Schedule below. For purposes of this **Exhibit 4**, "**Scheduled Substantial Completion Date**" shall mean [redacted], 2017 and "**Guaranteed Completion Date**" shall mean the date set forth across from the corresponding unit or phase of Trade Contractor Work on the Outline of Construction Schedule set forth below.

The following Outline of Construction Schedule highlights critical components of the Project and mandatory Milestone Dates that must be completed, without exception, by the Trade Contractor in order to meet the requirements of the Construction Schedule and Substantial Completion.

The Parties acknowledge and agree, in accordance with **Paragraph 2.11** to the Trade Contract Agreement, that the Trade Contractor will undertake Extraordinary Measures if the Authority determines that the performance of the Trade Contractor Work has not progressed or reached the level of completion required by the Milestone Dates for Trade Contractor's Work in the Outline of Construction Schedule or if Trade Contractor's Work is interfering with or delaying the Construction Manager's work and timely Completion of the Construction Manager's work pursuant to the Master Project Schedule.

**OUTLINE OF CONSTRUCTION SCHEDULE**

Description of Trade Contractor Work	Start Date	Guaranteed Completion Date	Comments
Design and Install of			
<b>** Work to be coordinated with other Subcontractors in each area.</b>			

---

**EXHIBIT 5**  
**BONDS**

---

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

[See Attached]

---

**EXHIBIT 6**  
**PROJECT LABOR AGREEMENT**

---

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

[See attached]

---

**EXHIBIT 7  
WARRANTY**

---

The following Warranty is included in this Trade Contract Agreement as **Exhibit 7**:

**WARRANTY**

Pursuant to the Trade Contract Agreement between the Minnesota Sports Facilities Authority (“**Authority**”) and \_\_\_\_\_ (“**Trade Contractor**”), Trade Contractor hereby warrants and guarantees that all of the Trade Contractor Work performed under the Trade Contract Agreement will be of new and of good quality, will be free of defects except for those inherent in the quality of the Trade Contractor Work allowed by the Trade Contract Documents, and will conform to the requirements of the Trade Contract Documents (“**Warranty**”). If the Trade Contractor Work does not conform to this Warranty, it shall be considered defective, and Trade Contractor shall remedy at its own expense any such defective Trade Contractor Work (including the costs that the Authority or Architect incur in dealing with or as a result of the defective Trade Contractor Work) so that the Trade Contractor Work conforms to the Trade Contract Documents. The Trade Contractor’s Warranty shall extend for a period of one (1) year after final acceptance by Authority. Where guarantees or warranties are required in the Trade Contract Documents for a period of more than one (1) year, such longer terms shall apply. All Suppliers’ warranties and guarantees, express or implied, respecting any part of the Trade Contractor Work and any materials used therein are hereby assigned by the Trade Contractor to the Authority. This Warranty shall supplement, and not supersede, warranties and guarantees given by Trade Contractor under the terms of the Trade Contract Documents.

TRADE CONTRACTOR:

WITNESS: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day, personally appeared \_\_\_\_\_ known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

SEAL

MY TERM EXPIRES

**PROFESSIONAL SERVICES AGREEMENT**

**DATE:** [insert]

**BETWEEN:** **MINNESOTA SPORTS FACILITIES AUTHORITY,**  
a public body and political subdivision of the State of Minnesota  
1005 Fourth Street South  
Minneapolis, MN 55415  
("Authority")

**AND:** [insert]  
("Contractor")

**WITNESSETH**

WHEREAS, the Minnesota Sports Facilities Authority is a public body, corporate and politic and political subdivision of the State of Minnesota (the "Authority");

WHEREAS, the Authority was established pursuant to 2012 Minnesota Laws, Chapter 299 (codified at Minnesota Statutes, Chapter 473d) (the "Act") to construct, finance, and operate a multi-purpose stadium and related infrastructure as a venue for the National Football League and a broad range of other civic, community, athletic, educational, cultural, and commercial activities in the City of Minneapolis, Minnesota (the "Stadium");

WHEREAS, Contractor is a [insert "corporation", "limited liability company", "partnership", and "limited liability partnership" are some possibilities] providing [insert] services is uniquely qualified to perform the services specified in this Agreement; and

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

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

“Stadium” means the stadium suitable for professional football designed, constructed, and financed under the Act and located in Minneapolis, Minnesota.

“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 Stadium 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:** The Required Services shall include, but not be limited to those services specified in Exhibit A.

3. **Term of the Agreement:**

3.1 The effective date of this Agreement is the date listed at the top of page 1 of this Agreement.

3.2 Expiration date. This Agreement shall expire on [insert] unless terminated earlier by either party as provided in section 19 of this agreement

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 Records and Data Safeguarding; and 18. Governing Law and Dispute Resolution.

4. **The Contractor’s Duties:**

4.1 The Contractor, which is not an employee of the Authority, Team, or Indemnitees, will perform all aspects of the Agreement in a timely manner in full accordance with the Authority’s Standard of Care and to the satisfaction of the Authority.

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

4.3 The Contractor shall only allow competent, trained employees to perform the Required Services, and the 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.

4.4 The Contractor warrants that it now has all personnel required to perform under the Agreement. The Contractor’s principal-in-charge for this Agreement shall be [insert] and that he or she shall materially participate in the performance of the Agreement.



5. **Time:**

5.1 In the performance of this Agreement, time is of the essence.

6. **Consideration and Payment:**

6.1 Effective [insert], the Authority will pay for all services performed by the Contractor under this Agreement as follows:

6.1.1 **Compensation.** The Authority shall pay the Contractor [“a fixed monthly fee as shown below” or “the hourly fees set forth below” or “the fixed fee shown below”], plus approved reimbursable costs and expenses. Reimbursable costs and expenses shall be reimbursed with no mark-up to Contractor.

6.1.2 **Total Obligation.** Notwithstanding any term in this Agreement to the contrary, the total obligation of the Authority for all compensation, expenses, and reimbursements to the Contractor under this Agreement will not exceed [insert] without prior written approval by the Authority.

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 by the 15th of the month.

6.3 Such amounts as the Authority may approve, consistent with the terms hereof, shall be payable to the Contractor not later than forty-five (45) days from the date upon which the Application for Payment is approved by the Authority and payment is made to any applicable disbursing agent by the Authority.

6.4 The 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 reasonable satisfaction and in accordance with all Applicable Laws. The Contractor will not receive payment for work reasonably 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 or subcontracting 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 either party 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 unless in writing specifically expressing such waiver signed by a person duly authorized by the party 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 or 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.
- 9.2 The 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 The 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.
- 9.4 Notwithstanding anything in this **Article 9** or other provisions of this Agreement to the contrary, the Authority agrees to the extent permitted by law to limit the liability of Contractor to the Authority or anyone claiming by or through the Authority for any and all claims, losses, costs or damages so that the total aggregate liability of Contractor to the Authority and anyone claiming by or through the Authority shall not exceed the Contractor’s total fee received for services under this Agreement and the available insurance proceeds of the

insurance provided by Contractor under **Article 10**. It is intended that this limitation will apply to any and all liability and causes of action, however alleged or arising, unless otherwise specifically prohibited by law. The provisions of this **Section 9.4**, shall survive the expiration or termination of this Agreement

10. **Insurance:**

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

10.2 Commercial General Liability (CGL) and Excess Liability

10.2.1 The Contractor shall maintain CGL and, if necessary, commercial excess liability insurance with a limit of not less than \$500,000 aggregate. The Authority and Indemnites shall be included as additional insureds under the CGL policy and under the commercial excess coverage, if any, for all matters arising out of the 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 Indemnites 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

10.2.3 The Contractor's insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority and/or Indemnites. 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.

10.2.4 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 The Contractor shall maintain business/commercial automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$500,000 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 The 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 the Contractor pursuant to this Agreement.

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

- 10.4.1 The Contractor shall maintain workers' compensation and employer's liability insurance for its own employees.
- 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 \$500,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.
- 10.4.4 The Contractor waives all rights against the Authority and the Indemnitees, 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 the Contractor pursuant to this section 10.4. The 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 Indemnitees. 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.

10.5 Professional Liability (Errors and Omissions Coverage)

10.5.1 The Contractor shall maintain Professional Liability (Errors and Omissions Coverage) and, if necessary, commercial excess liability insurance in the amount of at least \$500,000 per claim covering the Contractor's liability for negligent acts, errors or omissions in the performance of professional services under this Agreement. The Contractor further agrees that it will, throughout the entire period of required coverage and for an additional period of one (1) year following its last act of performance under this Agreement (a) provide the Authority with all pertinent information that the Authority 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. Such acceptance by the Authority 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 shall have fifteen (15) business days from the date of receipt of the Contractor's evidence of insurance to advise the Contractor in writing of any insurer that is not acceptable to the Authority. If the Authority do not respond in writing within such fifteen (15) day period, the Contractor's insurer(s) shall be deemed to be acceptable to the Authority.

10.7 Release and Waiver. The Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to its property interests. The Contractor hereby releases the Authority and the Indemnities from all claims, and all liability or responsibility to the Contractor, and to anyone claiming through or under the Contractor, by way of subrogation or otherwise, for any loss of or damage to the 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.

10.8 Evidence of Insurance

10.8.1 The Contractor shall, prior to commencement of any services related to this Agreement, furnish the Authority 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

following the execution of this Agreement. Contractor shall also provide copies of its insurance policies as requested by the Authority.

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

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

11. **Independent Contractors:**

11.1 All of the Contractor's employees and agents furnishing services under this Agreement shall be deemed employees solely of the 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. The 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 the Contractor with respect to third parties shall be binding on the Authority or any Indemnitee. The 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 the Authority and the Contractor or any Indemnitee is that of independent contracting entities. Neither shall be construed to be the employee of any other.

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

11.4 The Contractor shall strictly observe and comply with all Applicable Laws concerning hours of work, age, compensation, working conditions, payroll taxes and other conditions of employment. The Contractor 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.

12. **Audits and Record Keeping:**

- 12.1 Audits During this Agreement's Term: The Contractor agrees that the Authority, or any of its duly authorized representatives, at any time during the term of this Agreement, shall have access to, and the right to audit and examine, with reasonable notice, any pertinent books, documents, papers, and records of the Contractor related to the Contractor's charges and performance under this Agreement. The Contractor agrees to make such books, documents, papers and records available to the Authority during normal business hours upon request. The 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 The 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 as appropriate, for a minimum of ten (10) years from the date this Agreement is fully paid and audited. The Contractor agrees to make such books, records, documents, procedures and practices available to the Authority during normal business hours upon request.

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

- 13.1 The Authority owns all rights, title, and interest in all of the intellectual property, including copyrights, it creates in the course of performing its duties under this Agreement.
- 13.2 Government Data Practices: The Authority hereby provides notice and Contractor acknowledges that any records received, maintained or controlled by the Contractor in performing a government function 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. Contractor shall clearly and conspicuously label any confidential trade secret information as such prior to delivering it to the Authority.

14. **Equal Opportunity:**

- 14.1 With respect to its own employees, the Contractor shall comply with all Applicable Laws and any special requirements regarding equal employment opportunity.
- 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. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, public meetings, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, with respect to the program, publications, or services provided resulting from this Agreement. No publicity shall reference the Team or include or display the Team's name, trademarks, or logo, or the NFL name or logo.

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

16. **Compliance with Laws:**

16.1 The 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 Indemnites shall have no responsibility for fines, penalties or sanctions incurred due to acts or omissions of Contractor, its employees or agents.

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

17.1 The Authority 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 (2) 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. The Authority may, at the discretion of the Authority's CEO/Executive Director, give the Contractor access to Authority-owned data and files necessary for the Contractor's delivery of the services required by this Agreement. All such data and files will remain the property of the Authority and are subject to the Confidential Information requirements of Section 17.2 and all other provisions of this Agreement.

- 17.2 The Contractor (including its respective officers, trustees, employees, agents, 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 the Contractor to the extent that such persons, in the Contractor's considered judgment, need access to such information to enable the Contractor to perform its obligations under this Agreement. This covenant shall survive the termination of this Agreement.
- 17.3 The 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 without providing notice to the Authority and complying with Applicable Law.

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, the dispute shall be litigated in the Minnesota State Courts in Hennepin County, Minnesota. To the extent a dispute involves common questions of fact or law that involve third parties whose presence is necessary for

complete relief, the Authority and Contractor consent to the joinder of such third parties.

19. **Termination:**

19.1 Either party may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) business days' written notice to the other. Upon termination, the Contractor will be entitled to payment, determined on an hourly basis, for services properly performed through the date of termination as the Contractor's sole and exclusive remedy. In no event shall the Authority or the Contractor be liable for lost anticipated profits or consequential damages.

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 mail by certified mail, return receipt requested, postage prepaid, addressed to the party at the address stated below:

Authority at: Minnesota Sports Facilities Authority  
1005 Fourth Street South  
Minneapolis, MN 55415  
Attention: Contract Manager  
Facsimile No. (612) 332-8334

Contractor at: [insert]

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

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

21.1 The Contractor represents and warrants that no trustee, officer, employee, student or agent of the Authority 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 the Contractor with a statement of the Authority's rules and regulations to be followed by Contractor and its employees and agents in the Stadium. 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 the Contractor shall have any financial or personal interest in the Contractor's performance hereunder.

21.4 No person acting for or employed by the Authority is now or will hereafter be directly or indirectly involved on behalf of the 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 this 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.

22.11 Contractor hereby acknowledges and agrees that the Authority, 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.

22.12 This Agreement may be executed in any number of counterparts and each shall be considered an original and together they shall constitute one Agreement.

[The rest of this page intentionally left blank.]

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

**Contractor: [insert]**

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

Name: \_\_\_\_\_

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

**MINNESOTA SPORTS FACILITIES AUTHORITY**

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

Name: \_\_\_\_\_

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

**Exhibit A**  
**Scope of Services**

**MINNESOTA MULTI-PURPOSE STADIUM FIRST PHASE CAPITAL IMPROVEMENTS EQUITY PLAN**

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

- 1.1 Introduction. The State of Minnesota created the Minnesota Sports Facility Authority (“Authority”) to build the facility known as U.S. Bank Stadium (“Project”). The Authority is required by law to promote the involvement of women and members of minority communities in the construction of capital repairs, improvements, and replacements for the Project, as more completely described in Minn. Stat. § 473J.12. The Authority hereby adopts this comprehensive Equity Plan for the construction of the first phase of capital repairs, improvements, and replacements for the Project (“Capital Improvements 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, establish goals for construction contracts to be awarded to women-owned and minority-owned businesses, and establish workforce utilization goals in the construction of capital repairs, improvements, and replacements for capital improvements to the Stadium.
- 1.2 The Team. Minnesota Vikings Football, LLC (the “Team”) fully supports this Equity Plan.
- 1.3 Trade Contractor. The contractor hired by the Authority to perform construction of capital repairs, improvements, and replacements for capital improvement Projects to the Stadium shall be referred to as the “Trade Contractor”.
- 1.4 Targeted Business. In Sections 2-9 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 Capital Improvement Projects 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 necessary and reasonable good faith efforts to meet the goals, the requirements for reporting and monitoring, and the consequences of a Trade Contractor’s failure to make good faith efforts to achieve the goals.
- 1.5 Veterans. In Section 18 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 Trade Contractor. The Veterans Inclusion Program will also include efforts to utilize veterans in the construction workforce.
- 1.6 Workforce. In Sections 10-16 of the Equity Plan, the Authority establishes a Workforce Program. The Workforce Program sets a 32% and 6% goal for

workforce utilization for Capital Improvement Projects of minorities and women, respectively. The Workforce Program defines specifically how the goals may be met, the parameters of necessary and reasonable good faith efforts to meet the goals, the requirements for reporting and monitoring, and the consequences of a Trade Contractor's failure to make good faith efforts to achieve the goals.

- 1.7 Scope / Flowdown. As more specifically articulated in the Trade Contract Agreement to be entered into between the Authority and the Trade Contractor, this Equity Plan applies to the Trade Contractor and the Trade Contractor's Subcontractors and Suppliers of any tier.
- 1.8 Monitoring and Compliance. As more specifically described throughout the Equity Plan, the Authority has primary responsibility to monitor and audit the Trade Contractor's compliance with the Targeted Business Program, the Workforce Program, and the Veterans Inclusion Program.

## **Section 2 Targeted Business Program**

- 2.1 The Authority recognizes the legislature's mandate that the Authority establish and require Trade Contractors to exercise good faith efforts to meet goals for construction contracts for Capital Improvement Projects 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 Trade Contractors for Capital Improvement Projects and their various Subcontractors and Suppliers of all tiers.
- 2.2 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.
- 2.3 The Authority hereby adopts the participation goals for work included in the Trade Contract Agreement, based on the Disparity Study, and provided to the Authority by the City of Minneapolis. The Authority reserves the right to update these goals with input from the City of Minneapolis including, without limitation, after the full scope of work of a particular Capital Improvements Projects becomes known. The goals, expressed as a percentage of the "Cost of the Work" as that term is defined by the Trade Contract 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").

2.4 The Authority will require the Trade Contractor to make required good faith efforts to achieve the goals set forth in Section 2.3.

- 2.5 The Authority adopts this Targeted Business Program to define more specifically how the goals may be met, the parameters of the Trade Contractor's required good faith efforts to meet the goals, the requirements for reporting and monitoring, and the consequences if the Trade Contractor fails to meet the goals and fails to make good faith efforts to achieve the goals.

**Section 3. Definitions – Targeted Business. For purposes of the Targeted Business Program:**

- 3.1 "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.
- 3.2 "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.

- 3.3 “Targeted Business” means an MBE or WBE.
- 3.4 “Subcontractor” means any entity the Trade Contractor contracts with for any part of Capital Improvement Projects, including without limitation Sub-subcontractors and Suppliers of any tier to the Trade Contractor.
- 3.5 “Subcontract” means any contract entered into by the Trade Contractor or a Subcontractor for any part of Capital Improvement Projects.
- 3.6 “Good Faith Efforts” means the required good faith efforts described in this Targeted Business Program.

**Section 4. Achievement of Participation Goals – Targeted Business**

- 4.1 The Authority will require the Trade Contractor to use Good Faith Efforts to achieve the Targeted Business Goals through the Subcontracts entered into between the Trade Contractor and its Subcontractors, which in turn may enter into various agreements with lower-tier Subcontractors.
- 4.2 The Trade Contractor is not required to meet the goals of this Targeted Business Program for each individual Subcontract it enters into. Instead, the Trade Contractor 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 Trade Contractor may request participation at different levels from different Subcontractors.
- 4.3 The Trade Contractor 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 Capital Improvement Projects only after the MBE or WBE is certified as such as described in Sections 3.1 and 3.2.

- 4.4 Whether the Trade Contractor achieves the goals of this Targeted Business Program will be evaluated and determined as a Capital Improvement Project progresses and at the end of the Capital Improvement Project based on the total Cost of the Work as defined in the Trade Contract 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.
- 4.5 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 5. Compliance Monitoring and Reporting – Targeted Business**

- 5.1 The Authority intends to monitor the Trade Contractor's efforts to achieve the Targeted Business Goal. The Trade Contractor will cooperate with the Authority's monitoring plan and requests as outlined in this section.
- 5.5 Solicitation Phase – Trade Contractor. During the solicitation phase (between each Subcontract's pre-bid meeting and the bid due date), the Trade Contractor shall:
- (a) Comply with the Trade Contractor's Targeted Business Enterprise Plan required by the Trade Contract Agreement; and
  - (b) Submit all relevant documentation to 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.

5.6 Post-Bid Review Phase – Authority. During the post-bid review phase (between each Subcontract’s bid due date and completion of Exhibit A), the Trade Contractor shall:

- (a) Provide Good Faith Effort documents and a plan to carry out Good Faith Efforts during the construction phase;
- (b) Request any adjustments to 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) Request review from the Authority of 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 Trade Contractor, 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.

5.7 Post-Bid Review Phase – Trade Contractor. During the post-bid review phase (between each Subcontract’s bid due date and completion of the Authority’s review of Exhibit A), the Trade Contractor shall:

- (a) Provide to the Authority all requested Good Faith Effort documentation within 3 calendar days of the bid; and
- (b) Provide to the Authority a Good Faith Efforts Plan from the Trade Contractor 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 Trade Contractor 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.

- 5.9 Construction Phase – Trade Contractor. During the construction phase (between the award of each Subcontract and final payment), the Trade Contractor 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 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) 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 Trade Contractor to the Authority as of the last day of the reporting period;
  - (vi) Total payments received by the Trade Contractor from the Authority as of the last day of the reporting period;
  - (vii) Name of each WBE, MBE, and VBE the Trade Contractor 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 Trade Contractor to submit to the Authority on a form substantially similar to the Trade Contract Agreement Equity Plan Progress Report attached hereto as Exhibit C, which form the Authority may amend, from time to time, in its sole discretion.

**Section 6. Participation Counting – Targeted Business**

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

**Section 7. Commercially Useful Function – Targeted Business**

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

**Section 8. Good Faith Efforts – Targeted Business**

- 8.1 The Trade Contractor’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.
- 8.2 The Authority will determine whether the Trade Contractor has made Good Faith Efforts to achieve the Targeted Business Goal as described in Appendix C.

**Section 9. Consequences of Failure to Meet Goals and Failure to Make Good Faith Efforts – Targeted Business**

- 9.1 At the end of a Capital Improvement Project, and before the Authority makes Final Payment to the Trade Contractor, the Authority shall determine, in the Authority's sole discretion, whether the Trade Contractor met the Targeted Business Goal. If the Trade Contractor fails to meet these goals, the Authority shall also determine, in its sole discretion, whether the Trade Contractor made Good Faith Efforts to meet the Targeted Business Goal.
- 9.2 If the Authority determines the Trade Contractor failed to make Good Faith Efforts to meet the Targeted Business Goal, the Trade Contractor shall be liable to the Authority for the Authority's actual damages for the Trade Contractor's failure to make Good Faith Efforts. The Authority also shall withhold payment to the Trade Contractor as follows:
- (a) The Authority shall determine whether the Trade Contractor failed to make Good Faith Efforts for the entire Capital Improvement Project or for only a part of it.
  - (b) If the Authority determines the Trade Contractor failed to make Good Faith Efforts for the entire Capital Improvement Project, the Authority shall deduct payment to or assess damages against the Trade Contractor in an amount the Authority deems appropriate.
  - (c) If the Authority determines the Trade Contractor failed to make Good Faith Efforts for only part of the Capital Improvement Project, the Authority shall withhold payment to or assess damages against the Trade Contractor in an amount the Authority deems appropriate..
  - (d) The Authority shall make all determinations in Section 9.2(a)-(c) in the Authority's sole discretion.
- 9.3 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 10. Workforce Program**

- 10.1 he Authority recognizes the legislature's mandate that the Authority establish construction workforce goals for utilization of women and minorities during construction of a Capital Improvement 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.

10.2 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 Trade Contractor and its various Subcontractors for Capital Improvement Projects.

10.3 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.

10.4 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.

10.5 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 a particular Capital Improvement Project, the number of other large construction projects that will compete for workers with a Capital Improvement Project, and the availability issues these and other factors create.

10.6 The Trade Contractor is required to make Good Faith Efforts (as defined below) set forth in Section 12.3 to achieve the Workforce Goals.

## **Section 11. Definitions – Workforce. For purposes of the Workforce Program:**

11.1 "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.
- 11.2 “Subcontractor” means any entity the Trade Contractor contracts with for any part of a Capital Improvement Project performing work on the job-site. “Subcontractor” also includes Subcontractors of any tier to the Trade Contractor.
- 11.3 “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 15.

## **Section 12. Affirmative Action Certificate - Workforce.**

- 12.1 The Trade Contractor 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 Trade Contractor and all its Subcontractors must maintain certificates of compliance throughout a Capital Improvement Project, regardless of any exemptions that might otherwise apply under the Minnesota Department of Human Rights regulations.

## **Section 13. Compliance & Counting- Workforce.**

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

## **Section 14. Monitoring and Reporting – Workforce.**

- 14.1 The Trade Contractor 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 Trade Contractor shall collect and report the data in a manner and form prescribed by the City or other governmental entities.

- 14.2 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 Trade Contractor and its Subcontractors of all tiers.
- 14.3 The Trade Contractor must provide, at minimum, a report containing the following information on a monthly and cumulative basis throughout a Capital Improvement Project, separated by Subcontract, by trade, and supported by certified payrolls including every person who works on the Capital Improvement Project jobsite as part of the Trade Contract Agreement:
- (a) total hours of employment on the Capital Improvement Project;
  - (b) total hours of employment of women;
  - (c) total hours of employment of minorities; and
  - (d) employee zip codes.

**Section 15. Good Faith Efforts – Workforce.**

- 15.1 The Trade Contractor’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.
- 15.2 The Authority will determine whether the Trade Contractor has made Good Faith Efforts to achieve Workforce Goals as described in Appendix E.

**Section 16. Consequences of Failure to Meet Goals and Failure to Make Good Faith Efforts – Workforce.**

- 16.1 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 Trade Contractor’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 Capital Improvement Project.
- 16.2 If the Trade Contractor or its Subcontractors of any tier do not utilize Good Faith Efforts to achieve the Workforce Goal, then the Trade Contractor (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 Trade

Contractor 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 Capital Improvement Project, the Authority may impose appropriate damages on the Trade Contractor in its sole discretion, which damages may constitute without limitation, paying the Authority the cost to train the number of minorities and women that reasonably would have been employed on the Capital Improvement Project but for the Trade Contractor'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 Trade Contractor unless arbitrary and capricious.

## **Section 17. Data Collection and Reporting**

- 17.1 The Trade Contractor 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.

## **Section 18. Veterans Inclusion Program**

- 18.1 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.
- 18.2 To encourage participation in the Project by VBEs, during the pre-solicitation phase (between the award of the Trade Contract Agreement and the pre-bid meeting(s) for each Subcontract), the Trade Contractor 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 a Project information session meeting for the particular Capital Improvement Project designed for VBEs; and
  - (c) solicit VBEs to participate in the Project's small "meet and greet" sessions.
- 18.3 To encourage participation in the Project by VBEs, during the pre-solicitation phase (between the award of the Trade Contract Agreement and the pre-bid meeting(s) for each Subcontract), the Trade Contractor 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.

- 18.4 During the construction phase (between the award of each Subcontract and final payment), the Trade Contractor 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.
- 18.5 To encourage participation in the Project by veterans as part of the construction workforce, the Trade Contractor 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.
- 18 .6 To encourage participation in the Project by veterans as part of the construction workforce, the Trade Contractor shall:
- (a) Collaborate with any employment assistance firm(s) the Authority may hire and the employment program(s) the Authority may establish to increase recruitment and training of Minnesota veterans for the Project; and
  - (b) Identify veterans in the data, including payment data, entered into the LCP Tracker system operated by the City of Minneapolis Department of Civil Rights or other system designated by the Authority.



## **APPENDIX A - Targeted Business Participation Counting**

- (a) When a Targeted Business participates in a contract, count only the value of the work actually performed by the Targeted Business toward the Targeted Business Goal.
  - (1) Count the entire amount of that portion of a contract that is performed by the Targeted Business's own forces. Include the cost of supplies and materials obtained by the Targeted Business for the work of the contract, including supplies purchased or equipment leased by the Targeted Business (except supplies and equipment the Targeted Business Subcontractor purchases or leases from the Trade Contractor 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 Trade Contractor 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 point of origin ownership.
- (5) A Targeted Business certified as a supplier may perform both the supplier role and broker role under the same contract. Items purchased directly and solely by the Targeted Business supplier from the manufacturer will be counted at the supplier value of 60%. Items purchased directly and solely by the Targeted Business supplier from another supplier or wholesaler will only count at the broker rate of 5%.
- (6) Specialized or “to specification” equipment purchases are presumptively considered only able to be brokered.
- (7) A Target Business certified as a broker may only count at the broker rate of 5% for all project work.
- (8) The determination between supplier and broker action may change for Targeted Business suppliers from bid/commitment phase to construction phase.
- (9) A Targeted Business contractor who performs the installation, connection, application of materials may only count the cost of supplies or materials towards the goal if:
  - (i) The Targeted Business purchases the supplies or materials itself and
  - (ii) Industry practice supports and is structured for the supplies or materials to be purchased by the Targeted Business, including without limitation structural steel, rebar, and paint and other coatings.



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



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

### **CUF Site Visits**

- (a) The Trade Contractor 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 Trade Contractor will conduct at a minimum one site visit for each Targeted Business to determine that the Targeted Business is providing a CUF. The Trade Contractor 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 Trade Contractor and sent to the Authority.
- (f) Data from the CUF form sent by the Trade Contractor to the Authority 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 Trade Contractor 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 Trade Contractor has exercised Good Faith Efforts.
- (b) The Authority shall determine if the Trade Contractor has made adequate Good Faith Efforts. If the Trade Contractor fails to make adequate Good Faith Efforts, the consequences are discussed in Section 11.
- (c) Because the Trade Contractor may not be a Targeted Business, the Trade Contractor's Good Faith Efforts to achieve the Targeted Business Goal also must focus on obtaining participation of Targeted Business firms hired by the Trade Contractor as Subcontractors or qualified joint venture partner.
- (d) The Trade Contractor must make the 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 Trade Contractor 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 Trade Contractor and its Subcontractors shall complete the forms the Authority requests them to complete.
  - (1) The Authority shall determine what information is required from the Trade Contractor, proposed Subcontractors, or others as the Authority deems appropriate to evaluate the Trade Contractor's Good Faith Efforts, and shall determine what reviews, examinations and assessments of information are appropriate for such evaluation.
  - (2) Before the Trade Contractor enters into a contract with any Subcontractor, the Trade Contractor must submit to the Authority any forms that the Authority deems appropriate.
  - (3) The Trade Contractor 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 Trade Contractor 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 Trade Contractor shall notify the Authority before the Trade Contractor 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 Trade Contractor 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 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 Trade Contractor, the Trade Contractor 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor 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 Trade Contractor's failure to meet the participation goals as long as such costs are reasonable.
- (7) If requested by a solicited Targeted Business firm, the Trade Contractor 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 Trade Contractor need not provide financial assistance toward this effort.
- (8) Effectively using the services of minority/woman community organizations; minority/woman contractors' groups; local, state and federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation and placement of Targeted Business firms.



## **APPENDIX D – Workforce Compliance and Counting**

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

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

- (a) The Workforce Goal is expressed as a percentage of the total hours worked by individuals performing eligible work (“Workforce Work”) as part of the Construction Services Agreement, whether the workers are employed by the Trade Contractor 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 Trade Contractor 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 Trade Contractor has exercised Good Faith Efforts.
- (b) The Trade Contractor 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 Trade Contractor's employees are assigned to work. The Trade Contractor must specifically ensure that all lead supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the Trade Contractor'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 Trade Contractor by the union or, if referred, not employed by the Trade Contractor, this must be documented in the file with the reason therefore, along with whatever additional actions the Trade Contractor may have taken.
  - (4) Provide immediate written notification to the Authority when the union or unions with which the Trade Contractor has a collective bargaining agreement has not referred to the Trade Contractor a minority person or woman sent by the Trade Contractor, or when the Trade Contractor has other information that the union referral process has impeded the Trade Contractor'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 Trade Contractor must provide notice of these programs to the sources compiled under Paragraph (b)(2).
- (6) Disseminate the Trade Contractor's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Trade Contractor 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 Trade Contractor'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 Trade Contractor's equal employment opportunity policy with other contractors and Subcontractors with whom the Trade Contractor 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 Trade Contractor 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 Trade Contractor'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 Trade Contractor'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 Trade Contractor has exercised good faith efforts:
- (1) Timely submission of compliance review reports;
  - (2) Trade Contractor's cooperation with on-site compliance reviews and audits;
  - (3) Trade Contractor'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 Trade Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations provided that the Trade Contractor 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 Trade Contractor'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 Trade Contractor. The obligation to comply, however, is the Trade Contractor's and failure of such a group to fulfill an obligation must not be defense for the Trade Contractor's noncompliance.

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



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

## **Exhibit A**



**TRADE CONTRACT AGREEMENT EQUITY PLAN  
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

Proposer Company Name: \_\_\_\_\_

**Check ONE of the following:**

**No Targeted Business participation is committed on this project**

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

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

Total WBE % \_\_\_\_\_ Total MBE % \_\_\_\_\_

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



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

(Check ONE of the following)

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

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

I further certify that I have read the Targeted Business requirements found in the Trade Contract Agreement Equity Plan. I am authorized on behalf of the Proposer to submit this certification to the Minnesota Sports Facilities Authority. This certification is a material representation of fact on which the Authority may rely in awarding the contract.

Proposer Name:

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

## **Exhibit B**





**TRADE CONTRACT AGREEMENT AGREEMENT EQUITY  
TARGETED BUSINESS INFORMATION FORM**

Check ONE of the following:

No Targeted Business will be used by Proposer on this project.

Targeted Businesses are proposed to be used on this project.

The following is

1) a list of Targeted Businesses proposed to be used on the project AND

2) a list of Targeted Businesses who were considered by the Proposer for the project but were not selected by the Proposer:

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

Firm Name	Address	Telephone Number

**2) TARGETED BUSINESSES WHO WERE CONSIDERED BUT WERE NOT SELECTED:**


**TRADE CONTRACT EQUITY PLAN  
TARGETED BUSINESS COMMITMENT AND INFORMATION FORM**

Firm Name	Address	Telephone Number
-----------	---------	------------------


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



## CERTIFICATION

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

Proposer  
Name:

B y :                      D a t e :                      \_\_\_\_\_

Name:  
Title: \_\_\_\_\_

END OF DOCUMENT

\_\_\_\_\_

## **Exhibit C**

# TCA Equity Plan Progress Report\*

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

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

Interim Report  
Final Report

Reporting Period: From \_\_\_\_\_ to \_\_\_\_\_

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

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

Total W/MBE %

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

**INSTRUCTIONS:**

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

Authority Representative Signature \_\_\_\_\_ Date \_\_\_\_\_

\*Note that formatting may change.



March 10, 2017

**MEMORANDUM**

TO: MSFA Commissioners  
FROM: James Farstad  
SUBJECT: SMG Pre-Opening Budget

On August 22, 2014, the Authority entered into a Management and Pre-Opening Services Agreement (“Agreement”) with SMG for the management, operation, maintenance, and marketing of U.S. Bank Stadium and The Commons park. The Agreement established a pre-opening period that began on execution of the agreement (August 22, 2014) through the Opening Date of the Stadium (June 30, 2016) (the “Pre-Opening Period”). At the December 19, 2014 Board meeting, the Board approved the SMG Pre-Opening Consulting Budget in the amount of \$4,112,341.

Pursuant to the Agreement, SMG has now submitted the Final Pre-Opening Consulting Budget (the “Final Budget”) for approval of the Board. The Final Budget is presented consistent with the accounting methodology presented to the Board at the December 16, 2016 meeting reflecting revenues and expenses on a gross basis. The recommended Final Budget reflects a favorable variance to the Original Pre-Opening Consulting Budget of \$2,341. The Final Budget represents an increase in expenses from the previously approved budget of \$612,659. The increase is due to a combination of (1) increases in certain Pre-Opening expenses and (2) the inclusion of reimbursable expenses. The Final Budget also reflects Pre-Opening revenues that offset Pre-Opening expenses and the reimbursement of Pre-Opening expenses, which together total \$615,000.

The recommended Final Budget is as follows:

**Expense Categories:**

Personnel	\$2,425,000
Advertising and Grand Opening	1,120,000
Corporate/Regional Support	125,000
Other and Staffing Support	<u>1,055,000</u>
Total Expenses	\$4,725,000

**Revenue Categories:**

Advertising/Sponsorship/Event Revenue	\$315,000
Pre-Opening Expense Reimbursements	<u>300,000</u>
Total Revenues	\$615,000



<b>Total Expenses and Revenues</b>	<b>\$4,110,000</b>
<b>Previously Approved Pre-Opening Consulting Budget</b>	<b><u>\$4,112,341</u></b>
Estimated Favorable Variance to Original Budget	<u>\$ 2,341</u>

***Recommendation:*** *The Board (1) approves the final Pre-Opening expense budget of \$4,725,000 and a revenue budget of \$615,000 for a net Final Pre-Opening Consulting Budget of \$4,110,000 and that these changes will be reflected in the final 2016 Authority Budget, and (2) directs that the Pre-Opening account be closed once all of the Pre-Opening transactions are completed and that the remaining favorable variance be transferred to Authority Operating Reserves.*



March 10, 2017

**MEMORANDUM**

TO: MSFA Commissioners

FROM: James Farstad

SUBJECT: Approve Amendment to the Owner's Representative Agreement

The Owner's Representative Agreement with Hammes Company Sports Development, Inc. ("Hammes") expires on March 31, 2017. There are construction, project close-out tasks and financial tasks that will continue past the contract expiration date. Hammes has offered to continue their Owner's Representative services for the period from April 1, 2017 through April 30, 2017 on an actual hourly fee basis plus reimbursable expenses.

**Recommendation:** *The MSFA authorizes the Chair and CEO/Executive Director to execute Amendment No. 6 to the Owner's Representative Agreement with Hammes Company Sports Development, Inc. on an actual hourly fee basis plus reimbursed expenses.*



## AMENDMENT NO. 6

### AGREEMENT BETWEEN AUTHORITY AND OWNER'S REPRESENTATIVE

The Minnesota Sports Facilities Authority (“Owner”) and Hammes Company Sports Development, Inc. (“Owner’s Representative”) hereby agree to amend the Agreement between Owner and Owner’s Representative effective August 5, 2012, including Amendments No. 1, No. 2, No. 3, No. 4, and No. 5 (the “Agreement”) as follows:

1. The purpose of this Amendment No. 6 is to describe the Scope of Services and Fee structure for the Additional Services to be provided by the Owner’s Representative. The Scope of Services and Total Fee of the Owner’s Representative under the Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, and Amendment No. 5 shall remain unchanged. The Owner’s Representative’s fee and staff hours associated with this Amendment No. 6, are in addition to the Total Fee and shall be paid by Owner using the process described in Exhibit A. If Owner and Owner’s Representative agree to any further Additional Services, the Parties shall enter into a further Amendment reflecting such agreement and additional fees and costs of the Owner’s Representative.
2. Following completion of the Basic Services and the Agreement Term, on October 31, 2016, and the subsequent completion of Amendment No. 5 Services on March 31, 2017, the Owner’s Representative’s Staffing of the Project shall be adjusted as described herein and the Scope of Services shall be limited, and provided as an Additional Service. The table included in Exhibit A describes the Owner’s Representative’s anticipated staffing hours, but is for planning purposes only. Allocation of staffing hours may vary at the Owner’s Representative’s reasonable discretion
3. Owner Agrees that Owner’s Representative’s Limitation on Liability applies to this Amendment No. 6, in the same way it applies in the Agreement and all other previous Amendments to the Agreement (please refer to Section 2.1 of Amendment No. 2 and Section 3 of Amendment No. 3).
4. Owner and Owner’s Representative hereby release and waive against each other all claims consistent with the requirements of the Agreement and previous Amendments to the Agreement (please refer to Section 2.1 of Amendment No. 2 and Section 4 of Amendment No. 3).
5. Owner agrees that the Owner’s Representative’s Additional Services described in this Amendment No. 6 will require additional travel and other Reimbursable Expenses. Owner agrees that the Owner’s Representative shall be compensated for all additional Reimbursable Expenses, associated with this Amendment No. 6, subject to the Reimbursable Expense guidelines in the Agreement. Reimbursable Expenses are in addition to the monthly Fee described herein. Owner further agrees to continue to

provide office space within US Bank Stadium during the Term of this Amendment No. 6, to the Owner's Representative's staff at no cost, as currently provided.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 6 by their duly authorized representatives, intending thereby that this Amendment No. 6 to the Agreement shall be effective April 1, 2017 and shall terminate on July 31, 2017, unless extended by the Parties.

OWNER:  
MINNESOTA SPORTS FACILITIES AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Chair

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: CEO/Executive Director

OWNER'S REPRESENTATIVE  
HAMMES COMPANY SPORTS DEVELOPMENT, INC.

By:  
Name:  
Title: President

## EXHIBIT A

### AMENDMENT NO. 6 COMPENSATION SCHEDULE AND

#### REVISED PROJECT STAFFING PLAN

Subject to adjustment made by written Contract Revisions to the Agreement, the Owner's Representative's Additional Services Compensation and Project Staffing Plan will be updated in accordance with the anticipated staffing hours summarized below. All Additional Services Compensation is in addition to the Overall Cap in the Agreement. Owner will require a monthly invoice for the Additional Services to be submitted by the Owner's Representative.

##### Contract Amendment #6 - Anticipated Staffing Hours and Fees

##### Anticipated Staffing\*:

R. Robinson  
G. Johnson  
A. Burrage  
P. Sautebin  
C. Zirbel  
T. Kurt

APR - 17	MAY - 17	JUN - 17	JUL - 17
AVG	AVG	AVG	AVG
Hrs./wk.	Hrs./wk.	Hrs./wk.	Hrs./wk.
5	2	5	2
30	30	30	30
10	8	10	8
15	12	15	12
20	15	20	15
4	2	4	2
84	69	84	69

\*Actual staffing may vary depending on MSFA direction

On or before the 5<sup>th</sup> day of each month, or the next business day following such date if the 5<sup>th</sup> day falls on a weekend, the Owner's Representative will invoice Owner for the monthly Fee based on actual staff hours expended, and will provide a summary of such staff hours in a format similar to the summary shown above.\* The Owner will provide payment to the Owner Representative within thirty (30) calendar days of the invoice. Reimbursable Expenses for this extended period of services are in addition to the monthly Fee, and will be invoiced and paid in the same manner as the monthly fee, as described above.

##### Note:

\* Hourly Rates for staff are consistent with the Agreement between Owner and Owner's Representative effective August 5, 2012, including Amendments No. 1, No. 2, No. 3, No. 4 and No. 5 (the "Agreement") and are subject to annual adjustment per escalator language described in the Agreement.

**AMENDMENT NO. 6**  
**SCOPE OF SERVICES**

Subject to adjustment made by written Contract Revisions to the Agreement, the Owner Representative's Scope of Services will be revised to include only the following Additional Services:

1. Assist MSFA and MSFA counsel in preparing and administering Trade Contracts to commence capital projects and other projects as approved by the MSFA Board and as described on the February 9, 2017 MMPS Potential Change Report.
2. Assist MSFA and MSFA counsel in engaging HKS to design yet to be approved projects.
3. Assist MSFA and MSFA counsel in preparing and administering Trade Contracts to engage contractors to complete yet to be approved projects.
4. Prepare the monthly Master Application for Payment ("MAP") for MSFA's review and use, consistent with the process and format provided for the most recent MAP.
5. Assist MSFA in monitoring Mortenson's completion of outstanding City of Minneapolis code compliance items.
6. Assist MSFA in monitoring RRJ review of the exterior wall system and assist MSFA's counsel on related issues.
7. Assist MSFA in monitoring Verizon's completion of DAS system upgrades.
8. Assist MSFA in monitoring the completion of approved stadium security enhancements approved by MSFA.
9. Assist MSFA and MSFA Counsel in developing and implementing procedures for stadium Capital Improvement projects.
10. Assist MSFA in monitoring the completion of approved Capital Improvement projects.
11. Participate in weekly meetings by conference call or in person with MSFA in support of the above Scope of Services.

## MEMORANDUM

**TO:** Minnesota Sports Facilities Authority  
**FROM:** Lockridge Grindal Nauen, P.L.L.P., Government Relations  
**DATE:** March 9, 2017  
**RE:** Legislative Commission on Minnesota Sports Facilities appointments

---

The Legislative Commission on Minnesota Sports Facilities is established under the authority of the Legislative Coordinating Commission to oversee the operating and capital budgets of the Minnesota Sports Facilities Authority. The commission is charged with:

- 1.) providing financial oversight of the authority as described in subdivision 8;
- 2.) adoption of a statewide authority structure for the operation and management of sports facilities and entertainment venues under the jurisdiction of the authority. The authority membership shall represent the interests of both the metropolitan area and greater Minnesota; and
- 3.) creating a comprehensive management plan that alleviates booking and scheduling concerns regarding the sports facilities and entertainment venues under the jurisdiction of the authority.

The commission consists of three senators appointed by the senate majority leader, three senators appointed by the senate minority leader, three state representatives appointed by the speaker of the house, and three state representatives appointed by the house minority leader.<sup>1</sup>

Legislative appointments for the 2017-2018 biennium are as follows:

Senator Bobby Joe Champion	Representative Sarah Anderson
Senator Karin Housley	Representative Jack Considine
Senator Jeremy Miller	Representative Raymond Dehn
Senator Julie Rosen	Representative Bob Loonan
Senator David Tomassoni	Representative Paul Rosenthal
Senator Melissa Wiklund	Representative Chris Swedzinski

---

<sup>1</sup> Legislative Coordinating Commission webpage: <http://www.lcc.leg.mn/lcmsf/>



March 10, 2017

## MEMORANDUM

TO: MSFA Commissioners

FROM: Molly Pederson, Audubon Minnesota

SUBJECT: Statement of Audubon Minnesota Regarding Beginning of Study

Molly Pederson, Audubon Minnesota's Executive Director will be presenting an overview of the scientific study funded by the MSFA and Vikings and led by Audubon Minnesota in collaboration with Oklahoma State University and the University of Minnesota. This study will assess the impact of the stadium on bird mortality from glass collisions. The study will begin this month and will conclude after the 2018 fall migration season, with the study conclusions and recommendations to be released in 2019.

Audubon Minnesota, based in St. Paul, is the state office of the National Audubon Society and a non-profit environmental organization dedicated to conservation and the protection of wildlife, in particular the protection of birds. Audubon Minnesota engages people of all ages to take conservation action at home, work, school, and in their communities in order to address the biggest challenges birds face today.

Leading the design and implementation of the study:

**Dr. Scott R. Loss**, Oklahoma State University, Assistant Professor in the Department of Natural Resource Ecology & Management. Dr. Loss obtained his PhD at the University of Minnesota. He is recognized as a world expert in the study of migratory bird mortality including collisions with buildings.

**Dr. Robert B. Blair**; University of Minnesota, Professor and Extension Specialist in the Department of Fisheries, Wildlife and Conservation Biology. He is a global leader in the field of urban ecology and has specific expertise in studying the effects of urbanization on birds and other wildlife.

**Ms. Joanna Eckles**, Audubon Minnesota, Bird Friendly Communities Manager. She has a Master's in Conservation Biology from the University of Minnesota and is recognized as a national leader in the study of bird-window collisions. She has worked internationally with scientists, architects, planners and building managers to develop and promote solutions.

**Recommendation:** *No action is required at this time. This is for informational purposes only.*