

REQUEST FOR PROPOSALS (RFP)
St. Paul Smart Trips (Smart Trips)
Smart Trips Union Park – Survey & Focus Groups

Note: This document is available in alternative formats for persons with disabilities by calling Laura Baum at 651-224-8555 x21 or for persons who are hearing or speech impaired by calling the Minnesota Relay Service at 1-800-627-3529.

This RFP does not obligate Smart Trips to award a Contract or complete the project as described, and Smart Trips reserves the right to cancel the solicitation if it is considered to be in its best interest.

Project Specific Information

Project Overview

Smart Trips is requesting proposals from qualified consultants to conduct focus groups and several phases of a household telephone survey of St. Paul residents to measure travel behavior and attitudes related to transportation alternatives. The project takes place in several phases over the course of 18 months. The first phase (baseline survey and two focus groups) has already been completed. The remaining work is the focus of this RFP.

Organization Background

Smart Trips is a non-profit organization that improves access and mobility for those who travel in and around St. Paul.

The survey and focus groups are part of the evaluation strategy for the Smart Trips Union Park program. Smart Trips Union Park is an individualized social marketing program that encourages residents in the Union Park district of St. Paul to bike, walk, carpool and take transit instead of driving alone. Participants receive newsletters and Smart Trips Kits, which contain information and incentives related to transportation alternatives. There are also free guided bike rides, walks and classes. Program objectives include:

- Increase walking, bicycling, transit and carpooling trips
- Decrease vehicle miles traveled (VMT) by 3%
- Reach all residents of target area three times
- Reach interested residents of target area who don't supply emails six times
- Reach interested residents of target area who supply emails eight times
- Involve 10% of residents in the program through ordering of materials and events

Project Goals

- Evaluate whether the Smart Trips Union Park program changed the travel behavior of residents of the Union Park program, with regard to frequency of solo driving, biking, walking, transit use, and carpooling.
- Measure travel behavior change in the short term (four months), mid term (winter) and longer term (one year) using panel analysis, in which the same individuals are surveyed over time.
- Evaluate travel behavior change using rigorous, well-documented, and valid methods.
 - o Trip diaries measuring travel on the previous day
 - o Control groups for comparison
- Learn about the travel behaviors and perceptions of certain target groups after the program period using focus groups.

Scope of Work and Deliverables

A baseline survey of Union Park residents and residents of a control neighborhood was conducted in June 2009. The selected consultant will be conducting follow-up surveys, using the same instrument, with some questions potentially added or removed as determined by consultant and Smart Trips. A one year follow-up survey of the 2008 Smart Trips Summit-U program is also proposed. Responders are urged to be as specific as possible when describing the activities that will be performed. The specifications listed below are offered as a suggested method of achieving project goals. Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items should be separated from the required items on the cost proposal.

Phone Surveys

- 4-month follow-up survey of Union Park neighborhood (ideally around 100 of the same people interviewed at baseline)
- 4-month follow-up survey of Mac-Groveland (control) neighborhood (ideally around 100 of the same people interviewed at baseline)
- Winter follow-up survey of Union Park neighborhood
- Winter follow-up survey of Mac-Groveland neighborhood
- 1-year follow-up survey of Union Park neighborhood (ideally around 50 of the same people interviewed at baseline)
- 1-year follow-up survey of Mac-Groveland neighborhood (ideally around 50 of the same people interviewed at baseline)

Other Surveys

- 1-year follow-up survey of Summit-University neighborhood residents who participated in 2008 Smart Trips Summit-U program.
Could be a mailed survey or an email survey. We have lists with home address and email for participants. Please provide information on both methods for comparison.

Focus Groups

1. Focus group of program participants who changed behavior
2. Focus group of program participants who didn't change behavior
3. Focus group of non-participants
4. Winter focus group of program participants who changed behavior
5. Winter focus group of program participants who didn't change behavior
6. Winter focus group of non-participants

The baseline survey screened people for their interest in using alternative modes of transportation and asked some general questions about demographics and transportation habits. The rest of the baseline survey was a trip diary that asked about all the trips the respondent took on the previous day. People reported the mode (bike, walk, car, etc.) and purpose (work, errands, recreational, etc.) of each trip taken. Follow-up surveys will also include a trip diary and will be conducted only with people who completed the baseline trip diary survey.

Key Dates

- October 22: Responses due
- November 2009: 4-month follow-up survey work to be completed
- November 2009: Focus groups 1,2 and 3 to be conducted
- November 2009: Summit-U follow-up survey to be completed
- January 2010: winter follow-up survey to be completed
- January 2010: Focus groups 4, 5 and 6 to be conducted
- September/October 2010: One-year follow-up survey to be completed

Proposal Content

The following will be considered minimum contents of the proposal and must be submitted in the order listed:

1. Responder's company name, business address, the contact person's name, telephone number, fax number and email address (as available).
2. A statement of the objectives, goals and tasks to show or demonstrate the responder's view of the nature of the Contract.
3. A description of the deliverables to be provided by the responder.
4. An outline of the responder's background and experience with examples of similar work done.
5. A work plan that will identify the major tasks to be accomplished and be used as a scheduling and management tool, as well as the basis for invoicing.
6. The forms and documents required under any other section of this RFP.
7. Provide, in a separate envelope, one copy of the cost proposal, clearly marked on the outside "Cost Proposal", along

with the responder's official business name and address. For purposes of completing the cost proposal, Smart Trips does not make regular payments based upon the passage of time; it only pays for services performed or work delivered after it is accomplished. Terms of the proposal as stated must be valid for the length of the project. If proposing an hourly rate, unit rate or lump sum, include a breakdown (labor, overhead, profit & expenses) showing how the rate was derived. If proposing a cost plus fixed fee (profit) budget, the responder's Overhead Rate must not exceed 160%. For the purposes of this Cost Proposal, responders should utilize a fixed fee (profit) of 10%. Actual fixed fee (profit) will be determined/calculated by Smart Trips upon selection. The responder must include a total project cost along with the following:

- A breakout of the hours by task for each employee.
- Identification of anticipated direct expenses.
- Identification of any assumption made while developing this cost proposal.
- Identification of any cost information related to additional services or tasks, include this in the cost proposal but identify it as additional costs and do not make it part of the total project cost.
- Responder must have the cost proposal signed in ink by authorized member of the firm. The responder must not include any cost information within the body of the RFP technical proposal response.

Responders must limit their proposal to 25 pages, not including the cover letter and the required forms. Excess pages will not be reviewed and evaluated.

Questions

Responders who have any questions regarding this RFP must submit questions by e-mail only to:

Laura Baum
laura@smart-trips.org

All questions and answers will be posted on Smart Trips' web page <http://www.smart-trips.org/rfp>. All prospective responders will be responsible for checking the web page for any addendums to this RFP and any questions that have been answered. **Note that questions will be posted verbatim as submitted.**

Questions regarding this RFP must be received by Smart Trips no later than 2:00 p.m. Central Daylight Time on October 1, 2009. Smart Trips anticipates posting answers to such questions no later than 2:00 p.m. Central Daylight Time on October 8, 2009.

No other Smart Trips personnel are allowed to discuss the RFP before the proposal submission deadline.

Proposal Submittal

All proposals must be sent to:

Laura Baum
Residential Outreach Specialist
St. Paul Smart Trips
55 E 5th St, Suite 202
St. Paul, MN 55101

All responses must be received no later 4:00 p.m. Central Daylight Time on October 22, 2009. You may drop off your response at the Smart Trips office, which is on the skyway level of the Alliance Bank Center. Please call ahead (651-224-8555) to confirm staff will be present to time stamp your response.

- Enter on 5th St or Cedar St.
- Proceed up the escalator, take a right, walk past the security desk and the elevators. Smart Trips' office will be on your left.

Submit 4 copies of the proposal. Proposals are to be submitted in a sealed mailing envelope or package, clearly marked "Proposal" on the outside. An authorized member of the firm must sign each copy of the proposal in ink.

Smart Trips has estimated that the cost of this contract should not exceed \$78,000.

Proposal Evaluation

Representatives of Smart Trips will evaluate all responses received by the deadline. In some instances, an interview may be part of the evaluation process. A 100-point scale will be used to create the final evaluation recommendation. The factors and weighting on which proposals will be judged are:

1. Work plan	25%
2. Qualifications/experience of personnel working on the project	10%
3. Expressed understanding of project objectives	20%
4. Qualifications/experience of company	5%
5. Cost Detail	30%
6. Extent to which services will be performed within the U.S.*	10%

***Note: Responders must complete the attached “Location of Service Disclosure and Certification Form” and submit it as part of the proposal.**

Proposals will be evaluated on a “best value” basis with 70% qualifications and 30% cost considerations. The review committee will not open the cost proposal until after the qualifications points are awarded.

Smart Trips anticipates that the evaluation and selection will be completed by November 2, 2009.

General Information

Responders must adhere to all terms of this RFP.

Late responses will not be considered. Fax and e-mail responses will not be considered. All costs incurred in responding to this RFP will be borne by the responder.

Smart Trips Not Obligated To Complete Project

This RFP does not obligate Smart Trips to award a Contract or complete the project, and Smart Trips reserves the right to cancel the solicitation if it is considered to be in its best interest.

Proposal Certifications

By submitting a Proposal, responders warrant that the information provided is true, correct and reliable for purposes of evaluation for potential Contract award. The submission of inaccurate or misleading information may be grounds for disqualification from Contract award and may subject the responder to suspension or debarment proceedings, as well as other remedies available to Smart Trips, by law.

Disposition of Responses

All materials submitted in response to this RFP will become property of Smart Trips and will become public record, in accordance with Minnesota Statutes §13.591, after the evaluation process is completed. Pursuant to the Statute, completion of the evaluation process occurs when Smart Trips has completed negotiating the Contract with the successful responder. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statutes §13.37, the responder must:

- ☐ Clearly mark all trade secret materials in its response at the time the response is submitted,
- ☐ Include a statement with its response justifying the trade secret designation for each item, and
- ☐ Defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless Smart Trips, its agents and employees, from any judgments or damages awarded against Smart Trips in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives Smart Trips' award of a contract. In submitting a response to this RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of Smart Trips. Smart Trips is required to keep all the basic documents related to its contracts, including responses to RFPs for a minimum of seven years.

Smart Trips will not consider the prices submitted by the responder to be proprietary or trade secret materials.

Contingency Fees Prohibited

Pursuant to Minnesota Statutes §10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

Affidavit of Noncollusion

Responders must complete the attached "Affidavit of Noncollusion" and submit it as part of the proposal.

Worker's Compensation Insurance

The successful responder will be required to submit acceptable evidence of compliance with workers' compensation insurance coverage requirements prior to execution of the Contract.

Pre-Award Audit Requirement

The successful responder will be required to submit pre-award audit information and comply with audit standards and failure to do so may result in disqualification.

Conflicts of Interest

Responders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this RFP. This list should indicate the name of the entity, the relationship and a discussion of the conflict. Responders must complete the attached "Conflict of Interest Checklist and Disclosure Form" and submit it as part of the proposal.

Organizational Conflicts of Interest

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to Smart Trips, or the successful responder's objectivity in performing the Contract work is or might be otherwise impaired, or the successful responder has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to Smart Trips, which must include a description of the action, which the successful responder has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, Smart Trips may, at its discretion, cancel the Contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to Smart Trips, Smart Trips may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve Smart Trips' rights.

Soliciting proposals by Disadvantaged Business Enterprises (DBE)

Race Gender Neutral Assigned

The Mn/DOT office of Civil Rights has assigned a Race/Gender Neutral Goal to this project. Responders are directed to read the DBE Special Provisions, supplied along with this document or available by emailing laura@smart-trips.org. The DBE Special Provisions explains how to comply with the DBE requirements. In particular, see pages one and two regarding documents that a responder must submit with its proposal. The form required in the proposal can be found on page 3 of the Special Provisions. To view a listing of certified DBE's, please contact the Mn/DOT Office of Civil Rights at 651-366-3073, TTY 651-282-5799, or visit their website at www.dot.state.mn.us/eeocm.

Veteran-Owned/Service Disabled Veteran-Owned Preference

In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56, eligible certified veteran-owned and eligible certified service-disabled veteran-owned small businesses will receive a 6 percent preference in the evaluation of their proposal.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses should complete the Veteran-Owned/Service Disabled Veteran-Owned Preference Form in this solicitation, and include the required documentation. Only eligible, certified, veteran-owned/service disabled small businesses that provide the required documentation, per the form, will be given the preference.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be **currently** certified by the United States Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding certification by the United States Department of Veterans Affairs may be found at <http://www.vetbiz.gov>.

Foreign Outsourcing of Work Prohibited

All services under this Contract will be performed within the borders of the United States. All storage and processing of information will be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers.

Certification Regarding Lobbying

Federal money will be used (or may potentially be used) to pay for all or part of the work under the Contract, therefore the responder must complete the attached Certification Regarding Lobbying and submit it as part of the proposal.

Immigration Status Certification

By order of the Governor (Executive Order 08-01), if any response to a RFP is, or could be, in excess of \$50,000.00, the successful responder (and any subcontractors) MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the E-Verify system established by the Department of Homeland Security. Responders must complete the attached Immigration Status Certification Form and submit it as part of the proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Federal money will be used (or may potentially be used) to pay for all or part of the work under the Contract, therefore responders must certify the following, as required by the regulations implementing Executive Order 12549. See the Compliance Supplement to OMB Circular A-133 (found at http://www.whitehouse.gov/omb/circulars/a133_compliance/04/04toc.html).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

Instructions for Certification:

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
10. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
11. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant will attach an explanation to this proposal.

Sample Contract

You should be aware of Smart Trips standard Contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Contract is attached for your reference. Much of the language reflected in the Contract is required by statute. If you take exception to any of the terms, conditions or language in the Contract, you must indicate those exceptions in your response to this RFP; certain exceptions may result in your response being

disqualified from further review and evaluation. Only those exceptions indicated in your response to this RFP will be available for discussion or negotiation.

Travel Reimbursements

Reimbursements for travel and subsistence expenses actually and necessarily incurred by the successful responder, as a result of the Contract, will not exceed the amounts provided in the current Mn/DOT Travel Regulations. Reimbursements will not be allowed for travel and subsistence expenses incurred outside of Minnesota, unless the successful responder has received Mn/DOT's written approval for out-of-state travel. Minnesota will be considered the home base for determining whether travel is out-of-state.

Insurance Requirements

1. **Insurance Certificates and Continuity of Coverage Required.** The successful responder must provide a certificate of insurance showing that they have each type of insurance coverage and limits required under this Contract. The certificate must be filed with Smart Trips' within 30 days of execution of this Contract. Each policy and Certificate of Insurance must contain a 30 day notice of cancellation, nonrenewal or changes in coverage or limits to all named and additional insured. The successful responder must maintain such insurance in full force and effect throughout the term of this Contract.

2. **Required Insurance.** The following insurance coverages are required:

- a. **Workers' Compensation Insurance:** Except as provided below, the successful responder will be required to provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, will require its subcontractor(s) to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
 - \$100,000.00 – Bodily Injury by Disease per employee
 - \$500,000.00 – Bodily Injury by Disease aggregate
 - \$100,000.00 – Bodily Injury by Accident

If Minnesota Statutes §176.041 exempts the successful responder from Workers' Compensation insurance requirements, or if such responder has no employees in the State of Minnesota, they will be required to provide a written statement, signed by an authorized representative, indicating the qualifying exemption.

If, during the course of the Contract, the successful responder becomes subject to the workers' compensation insurance requirements, they will then be required to comply with such requirements and to provide Smart Trips with a Certification of Insurance evidencing such coverage.

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

- \$2,000,000.00 – per occurrence
 - \$2,000,000.00 – annual aggregate
 - \$2,000,000.00 – annual aggregate – Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
 - Personal and Advertising Injury
 - Blanket Contractual Liability
 - Products and Completed Operations Liability
 - State of Minnesota named as an Additional Insured

- c. **Commercial Automobile Liability Insurance:** The successful responder will be required to maintain insurance protecting the responder from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under the Contract, and in case any work is subcontracted the responder must require the subcontractor to provide Commercial Automobile Liability. Insurance minimum limits are as follows:
 - \$2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired and Non-owned Automobile

- d. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance.** The successful responder will be required to carry an insurance policy providing coverage for all claims they may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to their professional services required under the Contract. The following minimum limits will be required:

\$2,000,000.00 – per claim or event

\$2,000,000.00 – annual aggregate

Any deductible will be the sole responsibility of the successful responder and may not exceed \$50,000.00 without the written approval of Smart Trips. If the successful responder desires authority from Smart Trips to have a deductible in a higher amount, the successful responder must request so, in writing, specifying the amount of the desired deductible and providing financial documentation by submitting their most current financial statements to that Smart Trips can ascertain the ability of the successful responder to cover the deductible from its own resources.

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

e. **Additional Insurance Conditions:**

- i. The successful responder's policy(ies) must be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of the Contract;
- ii. The successful responder's policy(ies) and certificate(s) of insurance must contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days advance, written notice to Smart Trips.
- iii. The successful responder will be responsible for payment of Contract related insurance premiums and deductibles;
- iv. The successful responder will be required to include legal defense fees in addition to its liability policy limits, with the exception of section d above;
- v. The successful responder must obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and authorized to do business in the State of Minnesota; and
- vi. An Umbrella or Excess Liability insurance policy may be used to supplement the successful responder's policy limits to satisfy the full policy limits required by this Contract.

3. **Right to Terminate.** Smart Trips will reserve the right to immediately terminate the Contract if the successful responder is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the successful responder. All insurance policies must be open to inspection by Smart Trips and copies of policies must be submitted to Smart Trips upon written request.

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**STATE OF MINNESOTA
LOCATION OF SERVICE DISCLOSURE AND CERTIFICATION**

LOCATION OF SERVICE DISCLOSURE

Check all that apply:

- ☐ The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of Minnesota
- ☐ The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.
- ☐ The services to be performed under the anticipated contract as specified in our proposal will be performed in part within Minnesota and in part within another state within the United States.
- ☐ The services to be performed under the anticipated contract as specified in our proposal DO involve work outside the United States. Below (or attached) is a description of:
- The identity of the company (identify if subcontractor) performing services outside the United States;
 - The location where services under the contract will be performed; and
 - The percentage of work (in dollars) as compared to the whole that will be conducted in each identified foreign location.

CERTIFICATION

By signing this statement, I certify that the information provided above is accurate and that the location where services have been indicated to be performed will not change during the course of the contract without prior, written approval from the State of Minnesota.

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____

Telephone Number: _____

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the _____ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

CONFLICT OF INTEREST CHECKLIST AND DISCLOSURE FORM

Purpose of this Checklist. This checklist is provided to assist proposers in screening for potential organizational conflicts of interest. The checklist is for the internal use of proposers and does not need to be submitted to Mn/DOT, however, the Disclosure of Potential Conflict of Interest form should be submitted in a separate envelope along with your proposal.

Definition of “Proposer”. As used herein, the word “Proposer” includes both the prime contractor and all proposed subcontractors.

Checklist is Not Exclusive. Please note that this checklist serves as a guide only, and that there may be additional potential conflict situations not covered by this checklist. If a proposer determines a potential conflict of interest exists that is not covered by this checklist, that potential conflict must still be disclosed.

Use of the Disclosure Form. A proposer must complete the attached disclosure form and submit it with their Proposal (or separately as directed by Mn/DOT for projects not awarded through a competitive solicitation). If a proposer determines a potential conflict of interest exists, it must disclose the potential conflict to Mn/DOT; however, such a disclosure will not necessarily disqualify a proposer from being awarded a Contract. To avoid any unfair “taint” of the selection process, the disclosure form should be provided separate from the bound proposal, and it will not be provided to selection committee members. Mn/DOT’s Contract Management personnel will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer may be awarded the Contract notwithstanding the potential conflict. Mn/DOT’s Contract Management personnel may consult with Mn/DOT’s Project Manager and Department of Administration personnel. By statute, resolution of conflict of interest issues is ultimately at the sole discretion of the Commissioner of Administration.

Material Representation. The proposer is required to submit the attached disclosure form either declaring, to the best of its knowledge and belief, either that no potential conflict exists, or identifying potential conflicts and proposing remedial measures to ameliorate such conflict. The proposer must also update conflict information if such information changes after the submission of the proposal. Information provided on the form will constitute a material representation as to the award of this Contract. Mn/DOT reserves the right to cancel or amend the resulting Contract if the successful proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is materially false or misleading.

Approach to Reviewing Potential Conflicts. Mn/DOT recognizes that proposer’s must maintain business relations with other public and private sector entities in order to continue as viable businesses. Mn/DOT will take this reality into account as it evaluates the appropriateness of proposed measures to mitigate potential conflicts. It is not Mn/DOT’s intent to disqualify proposers based merely on the existence of a business relationship with another entity, but rather only when such relationship causes a conflict that potentially impairs the proposer’s ability to provide objective advice to Mn/DOT. Mn/DOT would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated. Nevertheless, Mn/DOT must follow statutory guidance on Organizational Conflicts of Interest.

Statutory Guidance. Minnesota Statutes §16C.02, Subdivision 10 (a) places limits on state agencies ability to Contract with entities having an “Organizational Conflict of Interest”. For purposes of this checklist and disclosure requirement, the term “Vendor” includes “Proposer” as defined above. Pursuant to such statute, “Organizational Conflict of Interest” means that because of existing or planned activities or because of relationships with other persons: (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state; (2) the vendor’s objectivity in performing the contract work is or might otherwise be impaired; or (3) the vendor has an unfair advantage.

Additional Guidance for Professionals Licensed by the Minnesota Board of Engineering. The Minnesota Board of Engineering has established conflict of interest rules applicable to those professionals licensed by the Board (see Minnesota Rules Part 1805.0300) Subpart 1 of the rule provides “A licensee shall avoid accepting a commission where duty to the client or the public would conflict with the personal interest of the licensee or the interest of another client. Prior to accepting such employment the licensee shall disclose to a prospective client such facts as may give rise to a conflict of interest”.

An organizational conflict of interest may exist in any of the following cases:

- ❑ The proposer, or its principals, own real property in a location where there may be a positive or adverse impact on the value of such property based on the recommendations, designs, appraisals, or other deliverables required by this Contract.
- ❑ The proposer is providing services to another governmental or private entity and the proposer knows or has reason to believe, that entity's interests are, or may be, adverse to the state's interests with respect to the specific project covered by this contract. **Comment:** the mere existence of a business relationship with another entity would not ordinarily need to be disclosed. Rather, this focuses on the nature of services commissioned by the other entity. For example, it would not be appropriate to propose on a Mn/DOT project if a local government has also retained the proposer for the purpose of persuading Mn/DOT to stop or alter the project plans.
- ❑ The Contract is for right-of-way acquisition services or related services (e.g. geotechnical exploration) and the proposer has an existing business relationship with a governmental or private entity that owns property to be acquired pursuant to the Contract.
- ❑ The proposer is providing real estate or design services to a private entity, including but not limited to developers, whom the proposer knows or has good reason to believe, own or are planning to purchase property affected by the project covered by this Contract, when the value or potential uses of such property may be affected by the proposer's performance of work pursuant to this Contract. "Property affected by the project" includes property that is in, adjacent to, or in reasonable proximity to current or potential right-of-way for the project. The value or potential uses of the private entity's property may be affected by the proposer's work pursuant to the Contract when such work involves providing recommendations for right-of-way acquisition, access control, and the design or location of frontage roads and interchanges. **Comment:** this provision does not presume proposers know or have a duty to inquire as to all of the business objectives of their clients. Rather, it seeks the disclosure of information regarding cases where the proposer has reason to believe that its performance of work under this Contract may materially affect the value or viability of a project it is performing for the other entity.
- ❑ The proposer has a business arrangement with a current Mn/DOT employee or immediate family member of such employee, including promised future employment of such person, or a subcontracting arrangement with such person, when such arrangement is contingent on the proposer being awarded this Contract. This item does not apply to pre-existing employment of current or former Mn/DOT employees, or their immediate family members. **Comment:** this provision is not intended to supercede any Mn/DOT policies applicable to its own employees accepting outside employment. This provision is intended to focus on identifying situations where promises of employment have been made contingent on the outcome of this particular procurement. It is intended to avoid a situation where a proposer may have unfair access to "inside" information.
- ❑ The proposer has, in previous work for the state, been given access to "data" relevant to this procurement or this project that is classified as "private" or "nonpublic" under the Minnesota Government Data Practices Act, and such data potentially provides the proposer with an unfair advantage in preparing a proposal for this project. **Comment:** this provision will not, for example, necessarily disqualify a proposer who performed some preliminary work from obtaining a final design Contract, especially when the results of such previous work are public data available to all other proposers. Rather, it attempts to avoid an "unfair advantage" when such information cannot be provided to other potential proposers. Definitions of "government data", "public data", "non-public data" and "private data" can be found in Minnesota Statutes Chapter 13.
- ❑ The proposer has, in previous work for the state, helped create the "ground rules" for this solicitation by performing work such as: writing this solicitation, or preparing evaluation criteria or evaluation guides for this solicitation.
- ❑ The proposer, or any of its principals, because of any current or planned business arrangement, investment interest, or ownership interest in any other business, may be unable to provide objective advice to the state.

DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST

Having had the opportunity to review the Organizational Conflict of Interest Checklist, the proposer hereby indicates that it has, to the best of its knowledge and belief:

_____ Determined that no potential organizational conflict of interest exists

_____ Determined a potential organizational conflict of interest as follows:

Describe nature of potential conflict:

Describe measures proposed to mitigate the potential conflict:

Signature

Date

If a potential conflict has been identified, please provide name and phone number for a contact person authorized to discuss this disclosure form with Mn/DOT Contract personnel.

Name

Phone

State of Minnesota — Immigration Status Certification

By order of the Governor (Governor's Executive Order 08-01), vendors and subcontractors MUST certify compliance with the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 et seq.) and certify use of the *E-Verify* system established by the Department of Homeland Security.

E-Verify program information can be found at <http://www.dhs.gov/ximgtn/programs>.

If any response to a solicitation is or could be in excess of \$50,000.00, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors MUST obtain this certification from all subcontractors who will participate in the performance of the Contract. All subcontractor certifications must be kept on file with the Contract vendor and made available to the state upon request.

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this Contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and
2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

I certify that the company shown below is in compliance with items 1 and 2 above and that I am authorized to sign on its behalf.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone Number: _____

Printed Name: _____ Title: _____

If the Contract vendor and/or the subcontractors are not in compliance with the Immigration Reform and Control Act, or knowingly employ persons in violation of the United States immigration laws, or have not begun or implemented the *E-Verify* program for all newly hired employees in support of the Contract, the state reserves the right to determine what action it may take. This action could include, but would not be limited to cancellation of the Contract, and/or suspending or debarring the Contract vendor from state purchasing.

For assistance with the *E-Verify* Program

Contact the National Customer Service Center (NCSC) at **1-800-375-5283** (TTY 1-800-767-1833).

For assistance with this form, contact:

Mail: 112 Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155

E-Mail: MMDHelp.Line@state.mn.us

Telephone: 651-296-2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1-800-627-3529

STATE OF MINNESOTA
VETERAN-OWNED/SERVICE DISABLED VETERAN-OWNED PREFERENCE FORM

In accordance with Laws of Minnesota, 2009, Chapter 101, Article 2, Section 56, eligible certified veteran-owned and eligible certified service-disabled veteran-owned small businesses will receive a 6 percent preference in the evaluation of their proposal.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses include certified small businesses that are majority-owned and operated by either (check the box that applies and attach the certification documents required with your response to this solicitation):

- ☐ 1) Recently separated veterans, who are veterans as defined in Minnesota Statutes §197.447, who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs. Required Documentation:
- Certification by the United States Department of Veterans Affairs as a veteran-owned small business
 - Discharge form (DD-214) dated on or after September 11, 2001 with condition honorable
- OR
- ☐ 2) Veterans who are veterans as defined in Minnesota Statutes §197.447, with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs. Required Documentation:
- Certification by the United States Department of Veterans Affairs as a service-disabled veteran-owned small business.

Eligible veteran-owned and eligible service-disabled veteran-owned small businesses must be **currently** certified by the United States Department of Veterans Affairs prior to the solicitation opening date and time to receive the preference.

Information regarding certification by the United States Department of Veterans Affairs may be found at <http://www.vetbiz.gov>.

You must submit this form and the documentation required above with your response in order to be considered for this preference.

SAMPLE CONTRACT

[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN BRACKETS]

STATE OF MINNESOTA PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

Federal Project Number: _____

State Project Number (SP): _____

Trunk Highway Number (TH): _____

Project Identification: _____

This Contract is between the State of Minnesota, acting through its Commissioner of Transportation (“State”) and [GIVE THE FULL NAME OF THE CONTRACTOR INCLUDING ITS ADDRESS (STREET, CITY AND STATE) ALSO INDICATE WHETHER THE CONTRACTOR IS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY (LLC) OR SOLE PROPRIETOR] (“Contractor”).

Recitals

Minnesota Statutes §15.061 authorizes State to engage such assistance as deemed necessary.

State is in need of [ADD BRIEF NARRATIVE OF THE PURPOSE OF THE CONTRACT].

Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of State.

Contract

1 Term of Contract; Survival of Terms; Incorporation of Exhibits

- 1.1 Effective Date: This Contract will be effective on the date State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2.
Contractor must not begin work under this contract until this Contract is fully executed and Contractor has been notified by State’s Authorized Representative to begin the work.
- 1.2 Expiration Date: This Contract will expire on [INSERT DATE], or when all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 Survival of Terms: All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Contract, including, without limitation, the following clauses: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction and Venue; and 14. Data Disclosure.
- 1.4 Exhibits: Exhibits _ through _ are attached and incorporated into this Contract.
[DELETE THIS CLAUSE AND “INCORPORATION OF EXHIBITS” FROM ARTICLE TITLE IF NOT USING EXHIBITS.]

2 Contractor’s Duties

[BE SURE TO INCLUDE ANY APPLICABLE ACTIVITY CODE(S) TO YOUR SCOPE OF WORK; EITHER HERE IN ARTICLE 2, OR IN YOUR SCOPE OF WORK EXHIBIT.]

- 2.1 Contractor, who is not a state employee, will: [PROVIDE SUFFICIENT DETAIL OF THE DUTIES SO THAT YOU CAN HOLD THE CONTRACTOR ACCOUNTABLE FOR THIS WORK. DO THIS BY EITHER: 1) LISTING THE CONTRACTOR’S DUTIES, DELIVERABLES AND COMPLETION DATES WITH PRECISE DETAIL HERE, OR 2) USE AN EXHIBIT THAT CONTAINS THE PRECISE DUTIES, DELIVERABLES AND COMPLETION DATES.]

3 Time

- 3.1 *Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.*

4 Consideration and Payment [CHOOSE THE CORRECT VERSION OF 4.1 FROM THE FOLLOWING CHOICES AND DELETE THE REMAINING]

[Fixed Hourly Rate]

4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

4.1.1 Compensation. Contractor will be paid an Hourly Rate of \$_____ up to maximum of _____ hours, but not to exceed \$_____.

4.1.2 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will not exceed \$_____.

[Lump Sum]

4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

4.1.1 Compensation. Contractor will be paid a Lump Sum of \$_____.

4.1.2 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will be \$_____.

[Unit Rate]

4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

4.1.1 Compensation. Contractor will be paid on a Unit Rate basis as follows:

Direct Labor Costs:	\$_____
Direct Expense Costs:	\$_____
Subcontractor(s) Costs:	\$_____
_____	\$_____
_____	\$_____

4.1.2 Direct Costs. Allowable direct costs include project specific costs listed on Exhibit __. Any other direct costs not listed in Exhibit __ must be approved, in writing, by State's Authorized Representative prior to expenditure.

4.1.3 Budget Details. See Exhibit __ for budget details on Contractor and its Subcontractor(s).

4.1.4 Travel Expenses. Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Minnesota Department of Transportation Travel Regulations". Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. The state of Minnesota will be considered the home base for determining whether travel is "out of state". See Exhibit __ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.

4.1.5 Total Obligation. The total obligation of State for all compensation and reimbursements to Contractor under this Contract will not exceed \$_____.

[Cost Plus Fixed Fee]

4.1 Consideration. State will pay for all services performed by Contractor under this Contract as follows:

4.1.1 Compensation. Contractor will be paid on a Cost Plus Fixed Fee (profit) basis as follows:

Direct Labor Costs:	\$_____
Overhead Costs:	\$_____
Fixed Fee Costs:	\$_____
Direct Expense Costs:	\$_____
Subcontractor(s) Costs:	\$_____
_____	\$_____
_____	\$_____

4.1.2 Overhead Rate. The overhead rate of XXX.XX% [For all work except Drilling, overhead rates are not to exceed 160%. Contact Audit to determine Contractor's most recent Audited Overhead Rate] of direct Salary Costs will be used on a provisional basis determined by Mn/DOT's Office of Audit and will not exceed 160%. [Drilling rates are NOT capped at 160%, and should be determined by Audit]

- 4.1.3 **Direct Costs.** Allowable direct costs include project specific costs listed in Exhibit __. Any other direct costs not listed in Exhibit __ must be approved, in writing, by State's Authorized Representative prior to expenditure.
- 4.1.4 **Budget Details.** See Exhibit __ for budget details on Contractor and its Subcontractor(s).
- 4.1.5 **Travel Expenses.** Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Minnesota Department of Transportation Travel Regulations". Contractor will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless it has received prior written approval from State for such out of state travel. The state of Minnesota will be considered the home base for determining whether travel is "out of state". See Exhibit __ for the current Minnesota Department of Transportation Reimbursement Rates for Travel Expenses.
- 4.1.6 **Total Obligation.** The total obligation of State for all compensation and reimbursements to Contractor under this Contract will not exceed \$_____.

4.2 Payment

- 4.2.1 **Invoices.** State will promptly pay Contractor after Contractor presents an itemized invoice for the services actually performed and State's Authorized Representative accepts the invoiced services. Invoices must be submitted in the format prescribed in Exhibit __ by State and according to the following schedule:
[INDICATE WHEN YOU WANT THE CONTRACTOR TO SUBMIT INVOICES, FOR EXAMPLE: "ON A MONTHLY BASIS" OR "UPON COMPLETION AND STATE'S ACCEPTANCE OF ALL SERVICES," OR IF THERE ARE SPECIFIC DELIVERABLES, LIST HOW MUCH WILL BE PAID FOR EACH DELIVERABLE]
- 4.2.1.1 Each invoice must contain the following information: Mn/DOT Contract Number, Mn/DOT Contract invoice number (sequentially numbered), billing address, if different from business address, and Contractor's original signature attesting that the invoiced service and costs are new and that no previous charge for those services and/or goods has been included in any prior invoice.
- 4.2.1.2 Direct nonsalary costs allocable to the work under this Contract must be itemized and supported with invoices or billing documents to show that such costs are properly allocable to the work. Direct nonsalary costs are any costs that are not the salaried costs directly related to the work of Contractor. Supporting documentation must be provided in a manner that corresponds to each direct cost.
- 4.2.1.3 The original of each invoice must be sent to State's Consultant Services Section for review and payment. A copy of the invoice will be sent to State's Authorized Representative and State's Project Manager for review.
- 4.2.1.4 Contractor must provide, upon request of State's Authorized Representative, the following supporting documentation:
- Direct salary costs of employees' time directly chargeable for the services performed under this Contract. This must include a payroll cost breakdown identifying the name of the employee, classification, actual rate of pay, hours worked and total payment for each invoice period; and
 - Signed time sheets or payroll cost breakdown for each employee listing dates and hours worked. Computer generated printouts of labor costs for the project must contain the project number, each employee's name, hourly rate, regular and overtime hours and the dollar amount charged to the project for each pay period.
- 4.2.1.5 If Contractor is authorized by State to use or uses any subcontractors, Contractor must include all the above supporting documentation in any subcontractor's Contract and Contractor must make timely payments to its subcontractors. Contractor must require subcontractors' invoices to follow the same form and contain the same information as set forth above.
- 4.2.2 **Retainage.** Under Minnesota Statutes §16C.08, subdivision 5(b), no more than 90% of the amount due under this Contract may be paid until State's agency head has reviewed the final product of this Contract. The balance due will be paid when State's agency head determines that Contractor has satisfactorily fulfilled all the terms of this Contract.

4.2.3 **Federal Funds.** If federal funds are used, Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by Contractor's failure to comply with federal requirements.

4.2.4 **Progress Reports.** Contractor will submit to State a monthly progress report as set forth in Exhibit _ showing the progress of work in work hours.

5 Conditions of Payment

5.1 All services provided by Contractor under this Contract must be performed to State's satisfaction, as determined at the sole discretion of State's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. Contractor will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state or local law.

6 Authorized Representatives

6.1 **State's Authorized Representative.** State's Authorized Representative will be:

Name/Title:

Address:

Telephone:

Fax:

E-Mail:

State's Authorized Representative, or his/her successor, will monitor Contractor's performance and has the authority to accept or reject the services provided under this Contract.

6.2 **State's Project Manager.** State's Project Manager will be:

Name/Title:

Address:

Telephone:

Fax:

E-Mail:

State's Project Manager, or his/her successor, has the responsibility to monitor Contractor's performance and progress. State's Project Manager will sign progress reports, review billing statements, make recommendations to State's Authorized Representative for acceptance of Contractor's good or services and make recommendations to State's Authorized Representative for certification for payment of each invoice submitted for payment.

6.3 **Contractor's Authorized Representative.** Contractor's Authorized Representative will be:

Name/Title:

Address:

Telephone:

Fax:

E-Mail:

If Contractor's Authorized Representative changes at any time during this Contract, Contractor must immediately notify State.

7 Assignment, Amendments, Waiver and Contract Complete

7.1 **Assignment.** Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

7.2 **Amendments.** Any Amendment to this Contract 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 Contract, or their successors in office.

7.3 **Waiver.** If State fails to enforce any provision of this Contract, that failure does not waive the provision or State's right to subsequently enforce it.

7.4 **Contract Complete.** This Contract contains all prior negotiations and agreements between State and Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

8 Liability

8.1 Contractor must indemnify, save and hold State, its agents and employees harmless from any and all claims or causes of action, including attorney's fees incurred by State, arising from a negligent or otherwise wrongful act or omission in the performance of this Contract by Contractor or Contractor's agents or employees. This clause will not be construed to bar any legal remedies Contractor may have for State's failure to fulfill its obligations pursuant to this Contract.

9 State Audits

9.1 Under Minnesota Statutes §16C.05, subdivision 5, Contractor's books, records, documents and accounting procedures and practices relevant to this Contract are subject to examination by State, State's Auditor or the Legislative Auditor, as appropriate, for a minimum of six years from the expiration date of this Contract.

10 Government Data Practices and Intellectual Property

10.1 **Government Data Practices.** Contractor and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this Contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either Contractor or State.

If Contractor receives a request to release the data referred to in this Clause, Contractor must immediately notify State. State will give Contractor instructions concerning the release of the data to the requesting party before the data is released.

10.2 Intellectual Property Rights

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

10.2.2 Obligations

10.2.2.1 **Notification.** Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by Contractor, including its employees and subcontractors, in the performance of this Contract, Contractor will immediately give State's Authorized Representative written notice thereof and must promptly furnish State's Authorized Representative with complete information and/or disclosure thereon.

10.2.2.2 **Representation.** Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of State and that neither Contractor nor its employees, agents or subcontractors retain any interest in and to the Works and Documents. Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless State, at Contractor's expense,

11 Workers' Compensation

- 11.1 Contractor certifies that it is in compliance with Minnesota Statutes §176.181, subdivision 2, pertaining to workers' compensation insurance coverage. Contractor's employees and agents will not be considered State employees. 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 State's obligation or responsibility.

12 Publicity and Endorsement

- 12.1 **Publicity.** Any publicity regarding the subject matter of this contract must identify State as the sponsoring agency and must not be released without prior written approval from State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.
- 12.2 **Endorsement.** Contractor must not claim that State endorses its products or services.

13 Governing Law, Jurisdiction and Venue

- 13.1 Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Data Disclosure

- 14.1 Under Minnesota Statutes §270C.65, and other applicable law, Contractor consents to disclosure of its social security number, federal employer tax identification number and/or Minnesota tax identification number, already provided to State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

15 Subcontractors

- 15.1 **Subcontracts**
- 15.1.1 If Contractor is authorized by State to use, or uses, any subcontractors, Contractor will be responsible for coordinating and managing the work of such subcontractors. The use of subcontractors does not relieve Contractor from its obligation to perform the services specified in this Contract.
- 15.1.2 Contractor's subcontracts must contain all appropriate terms and conditions of this Contract, including Articles 1, 2, 4, 5, 6 and 9 of this Contract as they apply to the subcontractor.
- 15.1.3 Contractor must, in accordance with Minnesota Statutes §16A.1245, pay subcontractors within 10 days of receiving payment from the state for undisputed services provided by subcontractors. Contractor must also pay interest, at the rate of 1.5% per month or any part of a month, to subcontractors on any undisputed amount not paid on time. The minimum monthly interest payment on a balance of \$100.00 or less is \$10.00.
- 15.1.4 Contractor must require subcontractors' invoices to follow the same format and contain the same information as set forth in Article 4.
- 15.1.5 Contractor must submit a copy of all subcontracts exceeding \$10,000.00 to State's Authorized Representative no later than 30 calendar days after executing the subcontract and prior to beginning work under the subcontract. Upon request by State, a copy of any executed subcontract under \$10,000.00 must be sent to State's Authorized Representative.

15.2 **Payment to Subcontractors**

15.2.1 (If applicable) As required by Minnesota Statutes §16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 days of the prime Contractor's receipt of payment from State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

16 **Termination; Suspension**

- 16.1 **Termination by State.** State or the Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to Contractor. Upon termination, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- 16.2 **Termination for Insufficient Funding.** State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to Contractor. State is not obligated to pay for any services that are provided after notice and effective date of termination. However, Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. State must provide Contractor notice of the lack of funding within a reasonable time of State's receiving that notice.
- 16.3 **Suspension.** State may immediately suspend this Contract in the event of a total or partial government shutdown due to failure to have an approved budget by the legal deadline. Work performed by Contractor during a period of suspension will be deemed unauthorized and undertaken at risk of non-payment.

[MOST CONTRACTS SHOULD INCLUDE INSURANCE REQUIREMENTS. THE INSURANCE REQUIREMENTS BELOW GENERALLY REPRESENT RECOMMENDED MINIMUMS.]

19 **Insurance Requirements**

- 17.1 **Insurance Certificates and Continuity of Coverage Required.** Contractor must provide a certificate of insurance showing that Contractor has each type of coverage and limits required under this Contract. Contractor must file the certificate with State's Authorized Representative within 30 days after execution of this Contract and prior to commencing any work under this Contract. Each policy and Certificate of Insurance must contain a 30 day notice of cancellation, nonrenewal or changes in coverage or limits to all named and additional insured. Contractor must maintain such insurance in full force and effect throughout the term of this Contract.
- 17.2 **Required Insurance.** Contractor must maintain and furnish satisfactory evidence of the following insurance policies:
- 17.2.1 **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum amounts are as follows:
- \$100,000.00 – Bodily Injury by Disease per employee
 - \$500,000.00 – Bodily Injury by Disease aggregate
 - \$100,000.00 – Bodily Injury by Accident

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

- 17.2.2 **Commercial General Liability Insurance:** Contractor must maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under this Contract whether the operations are by Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor pursuant to this Contract. Insurance

minimum amounts are as follows:

\$2,000,000.00 – per occurrence

\$2,000,000.00 – annual aggregate

\$2,000,000.00 – annual aggregate – Products/Completed Operations

The following coverages must be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

State of Minnesota named as an Additional Insured

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

\$2,000,000.00 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

- 17.2.4 Professional/Technical, Errors and Omissions and/or Miscellaneous Liability Insurance.**

Contractor is required to carry the following minimum amounts:

\$2,000,000.00 – per claim or event

\$2,000,000.00 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000.00 without the written approval of State.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract.

This policy will provide coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the Contract and include an extended reporting period provision of a minimum of three years following completion of the work.

- 17.2.5 Additional Insurance Conditions:**

18.2.5.1 Contractor's policy(ies) must be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of this Contract;

18.2.5.2 Contractor's policy(ies) will provide the State of Minnesota with 30 days advance notice of cancellation, nonrenewal or reduction in limits of coverage or other material change;

18.2.5.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;

18.2.5.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

18.2.5.5 Include legal defense fees in addition to its liability policy limits, with the exception of Article 17.2.4 above; and

18.2.5.6 Obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.

18.2.5.7 An Umbrella or Excess Liability insurance policy may be used to supplement Contractor's policy limits to satisfy the full policy limits required by this Contract.

- 17.3 Right to Terminate.** State will reserve the right to immediately terminate the Contract if Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Contractor. All insurance policies must be open to inspection by State and copies of policies must be submitted

to State's Authorized Representative upon written request.

18 INTENTIONALLY OMITTED

19 Discrimination Prohibited by Minnesota Statutes §181.59

- 19.1 Contractor will comply with the provisions of Minnesota Statutes § 181.59 which requires that Every Contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction will contain provisions by which Contractor agrees: 1) That, in the hiring of common or skilled labor for the performance of any work under any Contract, or any subcontract, no Contractor, material supplier or vendor, will, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; 2) That no Contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any Contract on account of race, creed or color; 3) That a violation of this section is a misdemeanor; and 4) That this Contract may be canceled or terminated by the State of Minnesota, or any county, city, town, township, school, school district or any other person authorized to grant Contracts for employment, and all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.

20 Immigration Status Certification

- 20.1 Pursuant to the Governor's Executive Order 08-01, if this Contract, including any extension options, is or could be in excess of \$50,000.00, Contractor certifies that it and its subcontractor(s):
- 20.1.1 Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
- 20.1.2 By the date of the performance of services under this Contract, Contractor and its subcontractor(s) have implemented or are in the process of implementing the E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.
- 20.2 Contractor will obtain certifications of compliance with this section from all subcontractor(s) who will participate in the performance of this Contract. Subcontractor certifications will be maintained by Contractor and made available to State upon request. If Contractor or its subcontractor(s) are not in compliance with 21.1.1 or 21.1.2 above or have not begun or implemented the E-Verify program for all newly hired employees performing work under this Contract, State reserves the right to determine what action it may take, including, but not limited to, canceling the Contract and/or suspending or debarring the Contractor from state purchasing.