

**STATE OF MINNESOTA**  
**State/Designer Basic Services Agreement**

**THIS AGREEMENT**, is made by and between the State of Minnesota, acting through its Commissioner of Administration and the Department of Military Affairs, Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, Minnesota 56345-4173, hereinafter referred to as "the State," as party of the first part, and \_\_\_\_\_ hereinafter referred to as "the Consultant," as party of the second part,

**WITNESSED:**

WHEREAS, the State is in need of professional design services for Department of Military Affairs Army Combat Fitness Test (ACFT) Field House, Arden Hills, MN (Project No. 24107) hereinafter referred to as the "Project," for which funds amounting to \$14,500,000.00 (Fourteen Million Five Hundred Thousand and No/100 Dollars) have been allocated for the Budgeted Cost of Construction of the Project.

WHEREAS, the Consultant represents that it is qualified to provide architectural and engineering professional services as required by this Agreement and is duly licensed pursuant to Minn. Stat. §§ 326.02-326.15.

WHEREAS, the Consultant represents and warrants that it will comply with Minn. Stat. Chap. 326 and shall provide the services of licensed architects, engineers, interior designers or other licensed professionals as necessary and required in order to perform the work under this agreement.

**NOW, THEREFORE**, it is hereby agreed by and between the parties hereto that the State will compensate the Consultant in an amount not to exceed \$ \_\_\_\_\_ (\_\_\_\_\_ and No/100 Dollars) as total compensation for Basic Services in accordance with Exhibit A and Exhibit B, which are attached and incorporated into this Agreement.

It is further agreed by and between the parties hereto:

**ARTICLE 1**  
**GENERAL REQUIREMENTS**

**1.0 End Date:** The parties agree to a contract end date of \_\_\_\_\_.

**1.1 Authorized Representatives:** For the purpose of administration of this Agreement, the State's Authorized Representative is Mr. Russ Eckholm, at telephone 320.616.6073, or his successor. The Consultant shall render all services pursuant to this Agreement under the direction and supervision of the authorized representative or his/her successor. The Consultant's Authorized Representative is \_\_\_\_\_, at telephone \_\_\_\_\_, or his/her successor.

**1.2 State's Consultant's Responsibilities:** Exhibit A, which is attached and incorporated into this Agreement, sets forth specific responsibilities and Instruments of Service for the State and for the Consultant for each phase of the professional services.

**1.3 Satisfactory Performances:** Time is of the essence under this Agreement. Neither party shall unreasonably delay the progress of the work beyond the time limit set forth in Exhibit A. The Consultant and State shall perform their obligations under this Agreement in a manner which meets the project requirements identified in Exhibit A. The Consultant shall perform in a manner that is consistent with reasonable professional skill and care. The Consultant and the State shall endeavor to satisfy the

Project Schedule. Neither party shall unreasonably impede the other in performance of its obligations. The Consultant acknowledges that the Project Schedule prepared by the State and set forth in this Agreement includes sufficient time allowances for State review and for review by authorities having jurisdiction over the project.

**1.4 Personnel:** All personnel provided by the Consultant shall be fully qualified and authorized under State or local law to perform the services required by this Agreement. The personnel shall not be employees of the State. The Consultant represents that services required hereunder will be performed directly by the Consultant or through subconsultants under contract with the Consultant which are identified in the List of the Personnel and Subconsultants (Exhibit E), which is attached and made a part of this Agreement. If during the term of this Agreement the State raises objections to any listed person or entity, the Consultant shall propose substitutes to whom the State and Consultant mutually agree. If such substitution causes delay or additional costs to the Consultant, the State shall agree to an equitable adjustment of the Project Schedule, and the Consultant's compensation may be changed by negotiation.

#### **1.5 Cost of Construction:**

**1.5.1 Budgeted Cost of Construction:** The State's Budgeted Cost of Construction is based on the State's program and/or legislative project funding authorizations. The Consultant shall design to meet the State's Budgeted Cost of Construction or subsequent modified Budgeted Cost of Construction as approved by the State.

**1.5.2 Responsibility for Estimated Cost of Construction:** The Consultant is solely responsible for the accuracy of its construction cost estimates and the State's actions and authorizations are based in whole or in part on that information. In preparing Estimated Construction Cost, the Consultant shall be permitted to include contingencies for design, bidding and price escalation; to recommend what materials, equipment component systems, and types of construction are to be included in the Construction Documents; to recommend reasonable adjustments in the scope of the Project and for no additional fee, to

include in the Construction Documents those bid alternates which have been approved by the State. If the Consultant finds, during the progress of the work, construction estimates may exceed the State's Budgeted Cost of Construction due to factors within the Consultant's control, the Consultant shall revise the design and all documents affected by the design revisions at no additional cost to the State. The State shall promptly review and, if approved, authorize the revisions to the design. In the event bids exceed the final cost estimate, the State, at its option, can require the Construction Documents to be revised as necessary to achieve the agreed upon estimate. This shall be accomplished without additional cost to the State for revising the Construction Documents and the rebid process. In the event bids are below the final cost estimate by fifteen percent (15%) or more and the State had previously agreed to program and/or quality reductions based on the final estimate, the State, at its option, and without additional compensation to the Consultant, will require the Consultant to revise the bid documents to reinstate the program and quality.

#### **1.6 Tests:**

**1.6.1 Design Phases Testing:** The Consultant shall engage and pay directly for topographical survey, investigative soil borings, test pits, water pressure, and for chemical, mechanical, or other tests and reports (collectively "tests and reports") needed to complete the design of the project.

**1.6.2 Construction Phase Testing:** The State shall engage and pay directly for construction phase tests and reports. The Consultant shall be entitled to rely on the accuracy and completeness of tests and reports provided by the State, subject to any limitations expressly stated by the professionals providing the tests and reports and only to the extent consistent with the ordinary standard of care for the type of professional providing the test, and provided further, that the Consultant is required to notify the State if the Consultant knows or has reason to know of any ambiguities or errors in the tests or reports, or if the Consultant knows or has reason to know of additional information relevant to the tests or reports provided by the State.

**1.7 Indemnification:** In the performance of this contract by Consultant, or Consultant's agents or

employees, the Consultant must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by Consultant's:

- 1) Intentional, willful, or negligent acts or omissions; or
- 2) Actions that give rise to strict liability; or
- 3) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Consultant may have for the State's failure to fulfill its obligation under this contract.

**1.8 State Audits:** Under Minn. Stat. § 16C.05, subd 5, the books, records, documents, and accounting procedures and practices of the Consultant and its employees, agents, or subconsultants relevant to this Agreement shall be made available and subject to examination by the State, Legislative Auditor, and State Auditor for a minimum period of six (6) years from the end of this Agreement.

**1.9 Ownership of Instruments of Service:** Drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and the Consultant's subconsultants are Instruments of Service.

**1.9.1 Ownership:** Prior to full payment of all sums due the Consultant under this Agreement and upon performance of all the State's obligations under this Agreement, the Consultant shall provide reproducible copies of the latest Instruments of Service and the latest electronic data prepared by the Consultant for the Project to the State and these shall become the property of the State. The Consultant shall retain full rights to electronic data and the Instruments of Service and the right to reuse component information contained in them in the normal course of the Consultant's professional activities. The Consultant shall be deemed the author of such electronic data or documents, shall retain all rights not specifically conveyed in writing to the State, and shall be given appropriate credit in any public display of such Instruments of Service.

**1.9.2 Reuse of Instruments of Service:** State acknowledges that (1) the Consultant has prepared the Instruments of Service for construction of the Project with the Consultant's involvement throughout the Project, as contemplated by this Agreement, (2) the Instruments of Service are not in themselves necessarily sufficient for construction of the Project without the Consultant's involvement, and (3) the Instruments of Service are not appropriate for construction of any other project except as provided herein. The Consultant acknowledges that the State will use and rely upon the Instruments of Service and the latest electronic data prepared by the Consultant for this Project, including but not limited to the as-built drawings and specifications in connection with any future repairs, remodeling or maintenance to the Project and of subsequent phases of the Project. If the Consultant is in default or breach of its obligations under this Agreement, the State shall have full ownership rights of the Instruments of Service and all electronic data. If the Consultant is adjudged to be in default or if this Agreement is terminated, the State shall not use the Instruments of Service for completion of this Project by others without the involvement of qualified professionals who shall assume the Consultant's professional obligations and liability for work not completed by the Consultant. To the fullest extent allowed by law, the State releases the Consultant, the Consultant's sub-consultants, and the agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of the State's use of the Instruments of Service other than in accordance with this Agreement.

**1.9.3 Transfer of Ownership:** Under no circumstances shall the transfer of ownership of the drawings, specifications, electronic data, or other Instrument of Service be deemed to be a sale by the Consultant and the Consultant makes no warranties, express or implied, of merchantability or of fitness for a particular purpose.

**1.10 Governing Law, Jurisdiction and Venue:** This Agreement is governed by the laws of The State of Minnesota. In case any dispute or controversy arises between the Consultant and the State, either party may exercise any legal remedies in District Court that may be available to them. The venue for any proceedings is agreed to be either Ramsey

County, or the county where the project site is located or work conducted. This selection of venue will be at the discretion of the State. Alternative dispute resolution methods, such as mediation, may be utilized when acceptable to all parties to the dispute or controversy. The Consultant and the State each shall incorporate the requirements of this Section in its agreements with sub-consultants, separate consultants, and contractors and separate contractors in connection with this Project.

**1.11 Successors and Assigns:** The Consultant binds itself jointly and severally, its successors, executors, administrators, and assigns to the State in respect to all covenants of this Agreement. With the exception of the State-approved consultants and special consultants, the Consultant shall not assign, sublet, or transfer any part of its interest in this Agreement except upon written approval of the State.

**1.12 Effective Date:**

Pre-Design and Title I (Schematic Design, Design Development, Contract Documents and Bidding phases): Until funds for this Agreement have been encumbered and all approvals made by the Department of Administration, this Agreement shall not be valid or effective, and there shall be no liability upon the State for payment. The Consultant shall have no obligation to commence work until funds have been encumbered and the State's Authorized Representative has provided the Consultant with a written notice to proceed.

Title II: This Agreement will not be valid or effective and the State shall have no liability for payments for the Construction and Post-Construction phases (Title II) until funds for the phases have been encumbered and the State has provided the Consultant with a written notice to proceed signed by BOTH the State's Authorized Representative, named in Paragraph 1.1, and the State's representative as to encumbrance of Construction and Post-Construction Phase funds (Title II Fees), Mr. Cody Samler, or his successor.

**1.13 Form of General Conditions:** American Institute of Architects AIA A201, General Conditions (2017 Edition), as amended by the State for this project and identified as Exhibit I, but solely for the purpose of defining the duties and responsibilities

between the Consultant and the State herein. The Consultant shall require each of its sub-consultants to be bound to the Consultant by the same terms and conditions required of the Consultant under this Agreement. With respect to the sub-consultants' work, all sub-consultants shall assume toward the Consultant all the obligations and responsibilities which the Consultant assumes toward the State. A sub-consultant is a person or entity who has a direct contact with the Consultant to perform a portion of consultant services in connection with this Agreement. Nothing in this Agreement shall be deemed to create any rights on the part of any person or entity not a party to this Agreement.

**ARTICLE 2  
PREDESIGN PHASE**

**2.1 Commencement:** The Predesign Phase shall commence after the State and the Consultant have executed this Agreement and the State has provided the Consultant with written notification to proceed with the work under this Agreement. The Consultant agrees to provide services in accordance with Exhibit A, Scope of Services, which is identified in Article 12 and incorporated by reference. The Instruments of Service, as enumerated in Exhibit A, will analyze facility needs, site analysis, review facility and site design standards.

If the Consultant finds it lacks sufficient information to complete this phase, the Consultant shall notify the State, and the Consultant shall not proceed until the State provides missing information except at the State's written direction.

**2.2 Submittals:** The Consultant shall submit the completed Predesign Document to the State for review and approval as enumerated in Exhibit A.

**2.3 Special Considerations:** Facilitate a Design Charrette during the Pre-Design Phase.

**2.4 Authorization to Proceed:** The Consultant shall not proceed with the Schematic Design Phase in Article 3 of this Agreement until the completion of Predesign Phase of this Agreement and receipt of written authorization and direction to proceed from the State's Authorized Representative.

### ARTICLE 3 SCHEMATIC DESIGN PHASE

**3.1 Commencement:** The Schematic Design Phase shall commence with written notification and direction to proceed with the work from the State's Authorized Representative. The Consultant agrees to provide services in accordance with Exhibit A, Scope of Services. The Instruments of Service, as enumerated in Exhibit A, will establish conceptual design for all major architectural and engineering systems, and the Consultant shall prepare a written description of the Project together with Schematic Design drawings, specifications, and other description as necessary to properly convey the scale and relationship of the project components, including, for new construction, site selection, building placement at the site, and response to all related considerations, including but not limited to soil profiles, soil consolidation, ground water level and drainage, and entry/exit relationships to existing buildings.

**3.2 Program Evaluation:** The Consultant, the State, and state agency clientele shall mutually agree on the program, schedule and budget and shall jointly establish communication procedures for the performance of services. If the Consultant, the State and the state agency clientele are unable to mutually agree on the program, schedule and budget, the State's Authorized Representative shall have final authority to make the decisions.

**3.3 Submittals:** The Consultant shall submit completed Schematic Design Instruments of Service as enumerated in Exhibit A.

**3.4 Authorization to Proceed:** The Consultant shall not proceed with the Design Development Phase in Article 4 of this Agreement until the completion of Schematic Design Phase of this Agreement and receipt of written authorization and direction to proceed from the State's Authorized Representative.

### ARTICLE 4 DESIGN DEVELOPMENT PHASE

**4.1 Commencement:** The Design Development Phase shall commence with the written authorization and direction to proceed from the State's Authorized

Representative. The Consultant agrees to provide services in accordance with Exhibit A, Scope of Services. The Consultant shall prepare Design Development Instruments of Service based upon approved Schematic Design Phase Instruments of Service and any changes in Project Schedule, Project Program, and Budgeted Cost of Construction to which the State and the Consultant agree. If the Consultant and the State do not reach agreement on change to the Project Schedule, Project Program or Budgeted Cost of Construction, the State's Authorized Representative, based on the contractual responsibility for the Project Schedule, Project Program and Budgeted Cost of Construction, shall have final authority to approve any and all changes. These Instruments of Service, as enumerated in Exhibit A, will illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, construction details, and equipment layouts. The Design Instruments of Service will further describe the major materials and systems and establish their quality levels.

**4.2 Submittals:** The Consultant shall submit completed Design Development Instruments of Service as enumerated in Exhibit A.

**4.3 Authorization to Proceed:** The Consultant shall not proceed with the Construction Documents Phase in Article 5 of this Agreement until the completion of Design Development Phase of this Agreement and receipt of written authorization and direction to proceed from the State's Authorized Representative.

**ARTICLE 5**  
**CONSTRUCTION DOCUMENTS PHASE**

**5.1 Commencement:** The Construction Documents Phase shall commence with written authorization and direction to proceed from the State's Authorized Representative instructing the Consultant to proceed with the preparation of the Construction Documents. The Consultant agrees to provide services in accordance with Exhibit A, Scope of Services. The Consultant shall prepare such documents from the approved Design Development Instruments of Service. These Instruments of Service, as enumerated in Exhibit A, shall consist of drawings and specifications setting forth in detail the requirements for the construction of the Project. The Consultant shall include or incorporate by reference Exhibit I, the General Conditions of the Contract for Construction, as modified by the State.

**5.2 Submittals:** The Consultant shall submit completed Construction Documents Instruments of Service as enumerated in Exhibit A.

**ARTICLE 6**  
**BIDDING PHASE**

**6.1 Commencement:** The Bidding Phase shall commence with written authorization and direction to proceed from the State's Authorized Representative. The Consultant agrees to provide services in accordance with Exhibit A, Scope of Services.

**6.2 Issue for Bids:** Upon acceptance of the bidding documents by the State's Authorized Representative, the Consultant shall issue to the State drawings and specifications to post for prospective bidders, assist the State in obtaining proposals from contractors and assist in the awarding of construction contract(s). The State shall provide the Consultant with information listed in Exhibit A.

**6.3 Addenda:** No changes shall be made in the Project Program or the various documents prepared by the Consultant or material substitution approval after bids have been invited, except upon prior authorization by the State's Authorized Representative. The State shall review and act upon proposed addenda that may be required by the Bidding Phase.

**6.4 Submittals:** The Consultant shall submit Bidding Instruments of Service as enumerated in Exhibit A.

**ARTICLE 7**  
**CONSTRUCTION PHASE**

**7.1 Commencement:** The Construction Phase shall commence with the written authorization and direction to proceed from the State signed by BOTH the State's Authorized Representative, and the State's representative as to encumbrance of Construction and Post-Construction Phase funds (Title II Fees), Mr. Cody Samler, or his successor when the official Notice to Proceed is issued to the successful bidder(s). The Consultant agrees to provide services in accordance with Exhibit A, Scope of Services. The Consultant shall administer the construction contract(s) in accordance with the provisions of the Construction Documents and as enumerated in Exhibit A of this Agreement upon receipt of a copy of the Notice to Proceed.

**7.2 The Consultant's Authority:** The Consultant, as representative of the State during the Construction Phase, shall communicate with the construction contractor(s). All of the State's instructions to construction contractor(s) shall be issued through the Consultant. Unless otherwise directed by the State's Authorized Representative, the Consultant shall have the authority to act on behalf of the State to the extent provided in the general conditions of construction contract(s) and in accordance with Article 7.7 of this contract.

**7.3 Construction Observation:** The Consultant shall make periodic on-site observations of the Project in accordance with Exhibit A. This shall include twice per month on-site observations by the Architect and once per month minimum by all engineering disciplines. The purpose of the on-site observations will be to observe the progress and quality of the construction work being carried on to determine if the work is proceeding in accordance with the Construction Documents. Unless otherwise stated in Exhibit A, the Consultant shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the work.

**7.4 Responsibility for Construction:** The Consultant shall not be responsible for construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the construction work, and shall not be responsible for a Contractor's failure to carry out the work in accordance with the Construction Documents. However, where the Consultant observes deficiencies in the work or where the Consultant observes Contractor failing to execute the construction work in accordance with the Construction Documents, the Consultant shall promptly notify the Contractor and the State in writing of all such deficiencies and shall inform the State when, in the Consultant's opinion, the work should be stopped. Authority to stop work shall, however, rest with the State.

**7.5 Contractor Applications for Payment:** Based on the Consultant's observation of the progress of the work for conformance with the Construction Documents and completion to the extent indicated by the Contractor, and evaluations of the Contractor's Applications for Payments, the Consultant shall promptly review and certify the amounts due the Contractor, to the best of the Consultant's knowledge and information.

**7.6 Submission Review:** The Consultant shall promptly review or take other appropriate action with respect to shop drawings, samples, or other submissions of Contractor for the purpose of checking for conformance with the Consultant's design intent and compliance with the information in the Construction Documents.

**7.7 Changes to the Work:** The Consultant shall prepare all reasonable changes to Construction Documents as required for the successful completion of the Project as requested by the State, and shall notify the State of additional services, if any, required by the State's request.

**7.7.1 Change Orders:** The State shall prepare all Change Orders to the construction contract. For purposes of this Agreement, a change order is defined as a Supplemental Agreement. The Consultant shall review all contractor and subcontractor pricing to ensure all labor and material costs are submitted in

units of labor, units of materials and their unit price/cost and ensure overhead and profit percentages are in accordance with the general conditions of the contract Exhibit I.

**7.7.2 Contractor Claims:** The Consultant shall promptly review, analyze and respond to contractor claims and costs, including delay claims and associated costs, in accordance with the general conditions of the contract for construction Exhibit I - AIA A201 General Conditions (2017 Edition) as modified by the State. (incorporated by reference, and available from the State).

## **ARTICLE 8 POST CONSTRUCTION PHASE**

**8.1 Commencement:** The Post Construction Phase shall commence with the issuance of the Certificate of Substantial Completion. Consultant agrees to provide services in accordance with Exhibit A and Instruments of Service as enumerated in Exhibit A. The established warranty period for the construction work will begin on the date stated on the Certificate of Substantial Completion.

**8.2 Drawings of Record:** See Article 11.1.

**8.3 Post Construction Warranty Review:** The Consultant and its sub-consultants shall provide an aggregate total of 32 person-hours for a one-day review of the warranty performance of the construction as identified in Exhibit A. This review shall take place 10 months following the date of substantial completion. The Consultant shall inform the State promptly and report in writing of its findings during this review. The Consultant shall provide the required administrative services to assure that all defective work shall be corrected to the satisfaction of the State. In the event this review and related administrative services require more than a total of 32 person-hours, or are not related to scope of work that is part of the Consultant's responsibility to address during the progress of scope of work during the Construction Phase, the Consultant shall be eligible for additional compensation for the additional administrative services as an additional service.

**ARTICLE 9  
CONSULTANT COMPENSATION**

**9.1 Determination of Compensation:** The State shall compensate the Consultant in accordance with the terms and conditions of this Agreement as provided in attached Exhibit B, Consultant Compensation.

**9.1.1 Total Compensation:** The Consultant's total compensation for Basic Services shall be the dollar amount listed in the preamble to this Agreement, immediately before Article 1, and enumerated in Exhibit B, Consultant Compensation.

**9.1.2** Reimbursement for expenses identified in Article 9.5 is in addition to compensation for basic services.

**9.2 Payments:**

**9.2.1 Consultant Progress Payments:** The State shall pay the Consultant monthly on the basis of monthly invoices submitted by the Consultant, as provided in Section 9.2.2, provided (1) the sum of payments made by the State shall remain in proportion to the amount of work completed by the Consultant and (2) the total payment for any phase shall not exceed the fee for that phase as enumerated in Exhibit B.

**9.2.2 Invoices:** Payments shall be made upon presentation of valid invoices to the State at the Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173, by the Consultant in a format prescribed by the State. Invoices for services provided under this Agreement may be submitted monthly. In accordance with Minn. Stat. § 16A.124, the State agrees to pay the Consultant within thirty (30) days of the receipt of a valid invoice. Payments not made within thirty (30) days after the date of receipt of a valid invoice by the State's, Authorized Representative, unless contested by the State, shall bear interest at a rate one and one-half percent per month unless otherwise provided in Minn. Stat. § 16A.124. Such interest shall begin to accrue thirty (30) days following receipt by the State of a valid invoice for those services.

**9.2.3 Subcontractor Payments:** In accordance with Minn. Stat. § 16A.1245, the Consultant shall pay to each subcontractor, within ten (10) calendar days of the Consultant's receipt of payment from the State, the amount paid to the Consultant on account of the subcontractor's work to the extent of the subcontractor's interest therein. If the Consultant does not make said payment to any subcontractor within the specified time, the Consultant shall pay interest to the subcontractor in the amount of one and one-half percent per month, or any part of the month, on any undisputed amount not paid to the subcontractor within ten (10) calendar days of the Consultant's receipt of payment from the State for any undisputed services provided by the subcontractor unless otherwise provided in Minn. Stat. § 16A.1245. To the extent a subcontractor provides for earlier or larger payments, the Consultant shall make payment to the subcontractor as provided for therein irrespective of the date or amount of any payment made by the State.

**9.2.4 Payment Withheld:** No deduction shall be made from payments to the Consultant on account of penalties, liquidated damages, or other sums withheld from payments to Contractors, provided nothing in this Section shall limit the State's remedies against the Consultant for costs or damages attributable to the Consultant's failure to perform under this Agreement.

**9.3 Compensation Adjustments:** For each phase of the Consultant's work commenced after an increase or decrease by the State in the Budgeted Cost of Construction, the Consultant's compensation for all remaining phases of the work shall be adjusted to the new Budgeted Cost of Construction, based on the percentage fee shown in Exhibit B, if the **change** in the Budgeted Cost of Construction is greater than fifteen percent (15%). Such adjustments shall not be retroactive for phases already completed. For any phase underway at the time the State adjusts the Budgeted Cost of Construction, the State shall prorate the adjustment of the Consultant's fee for the phase based upon the Project Schedule. The Consultant's fee shall not be decreased or increased should the contract award amount be more or less than the Budgeted Cost of Construction unless such increase or decrease is due to a change in the scope of the Project or the change results in a greater than fifteen



percent (15%) difference between the Budgeted Cost of Construction and the award amount.

#### **9.4 Additional Services:**

##### **9.4.1 Amendments/Supplemental Agreements:**

Amendments/Supplemental Agreements shall be executed for all additional services prior to the Consultant beginning any additional work that would incur a financial obligation to the State. Amendments/Supplemental Agreements resulting from an increase in the scope of work defined in this Agreement are not valid or effective until all Consultant and State signatures are completed, until funds for that purpose are fully encumbered by the State and the State has issued the Consultant a written notice to proceed with the additional work. Until all signatures are received and funds are encumbered, there shall be no liability upon the State for payment of obligation or on the part of the Consultant to commence services on the additional work. Any claim for additional fees shall be made to State immediately and not more than twenty (20) days after the Consultant's knowledge of the occurrence giving rise to the claim. Claims made after twenty (20) days shall not be honored by the State. Program changes requested by agency clientele shall be authorized only when such requests are made to the State's Authorized Representative in writing by authorized agency clientele personnel, and then only when the State's Authorized Representative approves such requests in writing and an Amendment to the contract has been executed.

**9.4.1.1** The Consultant is obligated to inform the State when additional fees will occur and request additional fee compensation prior to performing any additional work that would result in an increase in compensation under this contract. The State is not obligated to pay any additional fee compensation on unauthorized work. For purposes of this contract, unauthorized work is defined as work performed without a contract or amendment to the contract.

**9.4.1.2** Following execution of the original contract, should there be a disagreement between the Consultant and the State as to whether any services are included in the Consultant's contract or amendments, the Consultant shall continue to perform all services covered in the original agreement

and amendments including if required by the State services in dispute.

##### **9.4.2 Additional Services Compensation:**

Compensation for Additional Services is to be in addition to compensation for Basic Services. Additional Services provided by the Consultant and the Consultant's subconsultants in the interest of the Project include, but are not limited to, those listed in Exhibit A. Compensation for Additional Services shall be in accordance with Exhibit B.

##### **9.4.3 Revisions to the Scope of the Project:**

In the event that revisions to the budget or program are required due to factors outside the Consultant's control through the Design Development Phase, the Consultant shall make all revisions necessary as provided in Article 9.3.

##### **9.5 Reimbursable Expenses:**

Allowable reimbursable expenses are in addition to compensation for Basic Services and include expenses incurred by the Consultant and the Consultant's employees, and sub-consultants for their work on the Project.

Allowable reimbursable expenses paid by the State, at cost, upon presentation of invoices shall include the following:

1. Governmental Plan Review or Permit Fees.
2. Specification and Drawing Reproduction, bid sets only, for Governmental Plan Review and those requested by the State.

**9.6 Direct Expenses:** Unless otherwise provided in Section 9.5, compensation for direct expenses is included in the Consultant's basic services compensation.

**ARTICLE 10**  
**CANCELLATION, TERMINATION BY**  
**ABANDONMENT OR SUSPENSION OR**  
**SCOPE REDUCTION, EXPIRATION**

**10.1 Cancellation**

**10.1.1 Cancellation with Cause:** If through any cause within the Consultant's control that is not authorized by the State, the Consultant shall fail to submit Instruments of Service and other documents as required herein and according to the stated Project Schedule, or if the Consultant shall violate any of the covenants, agreements, or perform such services in an unsatisfactory manner, the State shall have the right to cancel this Agreement upon seven (7) days written notice to the Consultant. If, upon cancellation, the State incurs additional cost as a result of the Consultant's failure to perform, the Consultant shall be responsible for the amount of such additional costs reasonably incurred by the State. The State shall be entitled to withhold from any payment due to the Consultant, an amount which the State reasonably believes may be its additional costs until such time as the exact amount of such additional cost is determined and the Consultant has rendered payment thereof. Nothing herein shall be construed to require the State to pay interest on any retainage amount held by the State under this Agreement.

**10.1.2 Cancellation without Cause:** The State may cancel this Agreement at any time without cause upon thirty (30) days written notice to the Consultant. Upon termination, the Consultant will be entitled to payment for authorized services satisfactorily performed through date of cancellation.

**10.2 Abandonment, Suspension, or Scope Reduction** [NOTE: AIA A201 uses the word "suspension"]

**10.2.1 Notice:** At any time during the term of this Agreement, the State may abandon the Project entirely, suspend it for an indefinite time, or reduce the scope or quality of the Project upon seven (7) days written notice to the Consultant.

**10.2.2 Abandonment or Suspension:** In the event that the State abandons the Project entirely or suspends same for more than ninety (90) calendar

days, the Consultant shall only be entitled to compensation for services satisfactorily rendered as of the date of Notice of Abandonment or Suspension. In the event of abandonment or suspension, the Consultant shall remain the Consultant of record and be entitled to continue as the Consultant should the Project be recommenced within twelve (12) months after receipt of written notice.

**10.3 Expiration:** Subject to Section 1.0, unless otherwise canceled or terminated, this Agreement shall expire when the Consultant has satisfactorily performed all obligations and the State has made payment for same in accordance with this Agreement, but no later than twelve (12) months after Consultant issues the final Certificate of Payment for construction, or no later than five (5) years after the effective date of this Agreement, whichever occurs first.

**ARTICLE 11**  
**OTHER CONDITIONS**

**11.1 Drawings of Record:** Consultant shall provide electronic instruments of service for CADD drawings (in both DWG and PDF format) and specifications (in DOC or DOCX format) on optical disks. These electronic instruments of services shall be transmitted to the Department of Military Affairs Authorized Representative, Facilities Management Office.

The Consultant shall, upon final completion of the Project, revise the original drawings and specifications to show all design changes made by Consultant in the drawings, specifications, and addenda. Consultant shall also revise the original drawings and specifications to show as-built conditions reported by the Contractor. Consultant shall not be required to make a detailed survey of the project as-built and Consultant shall not be responsible for the accuracy of the information provided by the Contractor. However, Consultant shall be required to document all supplemental agreement work that has been incorporated into the Project. These drawings and specifications shall be transmitted to the Department of Military Affairs, Facilities Management Office, Camp Ripley, 15000 Highway 115, Little Falls, MN 56345-4173. These documents shall be referred to as Drawings of Record,

and shall be submitted in accordance with Exhibit A, Attachment 7. The State acknowledges that these documents may not be a complete record of as-built condition and that the documents shall be used in accordance with Article 1.9 in this Agreement. The drawing format shall meet the State's guidelines which are identified in Exhibit A.

**11.2 Insurance:** Exhibit C, which is attached and incorporated into the Agreement, identifies the insurance requirements for this Project. The Consultant shall provide the State with a copy of an insurance certificate(s) indicating compliance with the insurance requirements and limits in Exhibit C.

The Consultant may satisfy such requirements for limits of insurance by presenting evidence that the aggregate value of insurance carried by the Consultant and its subconsultants equal the required amount. The Consultant or its sub-consultants shall pay the insurance premiums.

**11.3 Nondiscrimination:** The Consultant agrees that during the term of this Agreement it will comply with the provisions of Minn. Stat. § 363A relative to nondiscrimination.

**11.3.1 Nondiscrimination on account of race, creed, or color prohibited in contract.**

The Consultant will comply with the provisions of Minn. Stat. § 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 shall contain provisions by which the 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, shall, 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, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) 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, county, city, town, school board, or any other person authorized to grant the 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.

**11.4 Tax Information:** The Consultant is required to provide the Consultant's social security number or federal and state tax identification numbers. This information may be used in the enforcement of federal and state tax laws. Supplying these numbers could result in action to require the Consultant to file tax return and to pay delinquent tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations. No other dissemination of this information is permitted.

**11.5 Affirmative Action:** The State intends to carry out its responsibility for requiring affirmative action by its Consultants.

**11.5.1 Covered Contracts and Consultants:** If the Agreement exceeds \$100,000 and the Consultant employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Consultant must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A Consultant covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**11.5.2 Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Consultant to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event.

A contract awarded without a certificate of compliance may be voided.

### **11.5.3 Minn. R. 5000.3400-5000.3600.**

**11.5.3.A General.** Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Consultant's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

**11.5.3.B Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers.

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 Consultant 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.
2. The Consultant agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
3. In the event of the Consultant's noncompliance with the requirements of this

clause, actions for noncompliance may be taken in accordance with Minnesota Statutes § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

4. The Consultant agrees to 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 Consultant'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.
5. The Consultant must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Consultant is bound by the terms of Minnesota Statutes § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

**11.5.3.C Consequences.** The consequences for the Consultant's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or the State.

**11.5.3.D Certification.** If applicable, the Consultant hereby certifies that it is in compliance with the requirements of Minnesota Statutes § 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance. Consultant shall complete and sign Exhibit H, Affirmative Action Certification, which is attached and made a part of this Agreement.

**11.5.4 Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions:**

Contractor certifies that neither it nor its principles is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor’s certification is a material representation upon which the contract award was based. Contractor shall provide immediate written notice to the State’s authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

**11.5.5 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 Consultant certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Consultant’s certification is a material representation upon which the contract award was based.

**11.5.6 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 the Consultant must certify the following, as required by the regulations implementing Executive Order 12549.

**11.5.6A 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 shall 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 shall 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 shall 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.

**11.5.6B Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:**

1. 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.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**11.6 Antitrust Laws:** The Consultant hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws

of the United States and the antitrust laws of the State of Minnesota.

**11.7 Government Data Practices Act:** The Consultant and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Consultant under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 by either the Consultant or the State.

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

**11.8 Energy Conservation and Sustainability:** The Consultant shall predesign and design the project to comply with the State of Minnesota Sustainable *Building Guidelines (MSBG)* – also known as B3 Guidelines. The guidelines are available at the following website: [www.msbg.umn.edu/index.html](http://www.msbg.umn.edu/index.html). This requirement applies to all new buildings, additions, and to major renovations. A major renovation is defined as at least 10,000 square feet and/or encompasses the complete replacement of the mechanical, ventilation, or cooling system of the building or a section of the building. During the development of the design, throughout all design phases, the Consultant shall submit all required documentation and enter all project data into the MSBG Tracking Tool located at the following website: [www.msbgtracking.com](http://www.msbgtracking.com). The Consultant shall enter sufficient data to achieve a “Compliant” status.

**11.8.1 All Projects:** The Consultant agrees to and shall provide energy efficient design and specify the maximum energy efficient equipment on all projects regardless of the project size or scope. The Consultant shall, through coordination and approval by the State, incorporate sustainable design options into the project.

**11.9 E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

For services valued in excess of \$50,000, Consultant certifies that as of the date of services performed on behalf of the State, Consultant and all its subconsultants will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Consultant is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at:

<http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Consultant and made available to the State upon request.

**11.10 Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)**

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

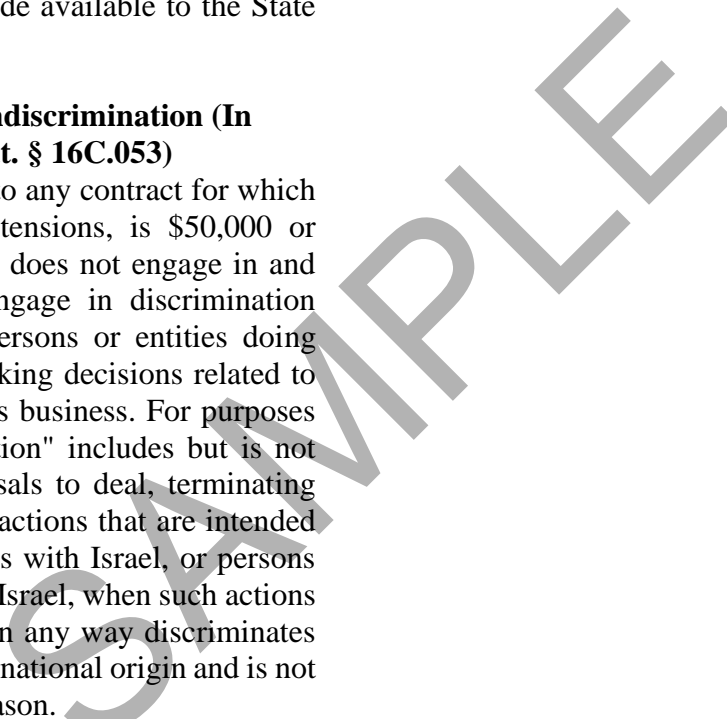
**11.11 Subcontractor Reporting:**

If the value of this contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount spent with diverse small businesses. When this applies, Contractor will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

**11.12 Reports:** If the final product of the contract is a written report, the Consultant must file a copy with the State of Minnesota Legislative Reference Library in accordance with the Minnesota Statute 16C.08 Sub. 6. One (1) electronic copy (Word, PDF,

URL) to [reports@lrl.leg.mn](mailto:reports@lrl.leg.mn) and two (2) print copies to:

Legislative Reference Library  
645 State Office Bldg.  
100 Rev. Dr. MLK Jr. Blvd.  
St. Paul, MN 55155



**ARTICLE 12  
OTHER PROVISIONS**

**12.1** The following clauses are excluded from this Agreement:

- None

**12.2** In the event of a conflict between the terms of this Agreement, and its Exhibits, this Agreement shall take precedence. No terms and conditions of the Consultant's proposal will be construed to modify, diminish or derogate the terms and conditions of this Agreement.

**12.3 Survival of Terms:** The following clauses survive the expiration or cancellation of this Agreement:

- 1.7 Indemnification
- 1.8 State Audits
- 1.9 Ownership of Instruments of Service
- 1.10 Governing Law, Jurisdiction and Venue
- 11.7 Government Data Practices Act

**ARTICLE 13  
SCHEDULE OF EXHIBITS**

**The following documents are incorporated herein.**

- 13.1 Exhibit A** Scope of Services.
- 13.2 Exhibit B** Consultant Compensation.
- 13.3 Exhibit C** State Insurance Requirements.
- 13.4 Exhibit D** Special Conditions for Contract Work Involving Federal Funds.
- 13.5 Exhibit E** List of Personnel and Subconsultants.
- 13.6 Exhibit F** Not Used
- 13.7 Exhibit G** Not Used
- 13.8 Exhibit H** Not Used
- 13.9 Exhibit I** AIA A201 General Conditions (2017 Edition) as modified by the State (incorporated by reference, and available from the

State).

**13.10 Exhibit J** Consultant Performance Evaluation Form (Incorporated by reference. A copy is available at website: <http://mn.gov/admin/government/construction-projects/manuals-guidelines-forms/forms/index.jsp> )

**13.11 Exhibit K** Project Energy-Utility Savings Form (Incorporated by reference. A copy is available at website: <http://mn.gov/admin/government/construction-projects/manuals-guidelines-forms/forms/index.jsp> )



IN WITNESS WHEREOF the State has caused this Agreement to be duly executed in its behalf and the Consultant has caused the same to be duly executed on its behalf.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

SWIFT Purchase Order Number: \_\_\_\_\_

Certification Signature: \_\_\_\_\_

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

**2. CONSULTANT:**

*The Consultant certifies that the appropriate person(s) have executed the Agreement on behalf of the Consultant as required by applicable articles, bylaws, resolutions, or ordinances. The Consultant further certifies that no additions, omissions or other changes have been made to the Agreement.*

By: \_\_\_\_\_  
Corporate Signature

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

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

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

By: \_\_\_\_\_  
Corporate Signature

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

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

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

**3. STATE AGENCY:**

**DEPARTMENT OF MILITARY AFFAIRS**

*Contract approval and certification that state funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

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

Printed Name: Major General Shawn P. Manke

Title: Adjutant General

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

**4. COMMISSIONER OF ADMINISTRATION,**

As delegated to Materials Management Division:

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

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

EXHIBIT A  
SCOPE OF SERVICES

Consultant Services for  
Department of Military Affairs Army Combat Fitness Test (ACFT)  
Field House, Arden Hills, MN (Project No. 24107)

SAMPLE

EXHIBIT A  
SCOPE OF SERVICES

The State is in need of architecture engineering, structural engineering, mechanical engineering, electrical engineering, civil engineering and landscape architecture services to design or for determining Department of Military Affairs Army Combat Fitness Test (ACFT) Field House, Arden Hills, MN (Project No. 24107).

**1.0 Project Overview:**

**1.0.1 Project Scope:**

This project is for the design of a support Army Combat Fitness Test (ACFT) Field House for the Minnesota Army National Guard. The new facility will be approximately 49,000 sq ft, on a predetermined site located on approximately 5 acres of land at Arden Hills Army Training Site (AHATS), Arden Hills, MN, to support testing physical fitness requirements of the Minnesota Army National Guard Soldiers.

**Scope of Services:**

1. The Scope of the services include: Pre-Design, Schematic Design, Design Development, Contract Documents, Construction and Post Construction phase services.
2. The selected Design Team shall provide the following services in accordance with the Basic Services Agreement, and Consultant Designers Procedures Manual (available at the Real Estate and Construction Services (RECS) website : <https://mn.gov/admin/business/vendor-info/construction-projects/manuals-guidelines-forms/forms/> and <http://mn.gov/admin/business/vendor-info/construction-projects/index.jsp>)
3. Design Team shall have an Architect as Team Lead.
4. Army Combat Fitness Test (ACFT) Field House facility to include but not limited to: 200m track (8 lanes) with offices, weights, cardio, studios and toilet/shower/locker rooms, fire detection and fire alarm systems. Site improvements to include, privately owned vehicle (POV) parking lot, all utility services, roads, walks, curbs, gutters, storm drainage and on-site storm water retention. This facility will be constructed on state owned property and is subject to all State of Minnesota building, accessibility, energy, mechanical and other applicable codes.
5. The facility shall include antiterrorism force protection (ATFP) measures in accordance with the most current version of the Department of Defenses' (DoD) Minimum Antiterrorism Standards for Buildings (UFC 4-010-01). Physical security measures will be incorporated into the design including maximum standoff distances, berms, landscaping and bollards when standoff distances cannot be maintained.
6. Field House shall be designed to a minimum life cycle of 50 years in accordance with the Department of Defenses' (DoD) Unified Facilities Code (UFC 1-200-02) including energy efficiencies, building envelope and integrated building systems performance. Access for individuals with disabilities will be provided. Finishes within spaces will be as noted in NGB 415-5 General Facilities Design Guide, and

NGB DG 415-2 Logistics Facilities Design Guide as applicable. Design services will include a complete design of furniture, fixtures and equipment to ensure functional spaces and provide the owner with documents for furniture purchase from separate funds.

### **Special Considerations:**

When the project is funded by State bond proceeds, is a new building, addition, or major renovation, applying the Minnesota Sustainable Building Guidelines (B3) with the Sustainable Building 2030 program shall be included in the scope of work. Training and past experience in applying the B3/SB2030 guidelines are preferred. For purposes of this RFP. Applicable resources are:

- Case Study Database: <http://casestudies.b3mn.org/>
  - B3 Guidelines: <http://www.b3mn.org/guidelines/index.html>
  - SB 2030: <https://www.b3mn.org/2030energystandard/>
1. The Consultant will facilitate a Design Charrette during the pre-design phase of design. The Design Charrette is anticipated to last up to 2 full days. The Charrette will be conducted at the Division Headquarters Building at Arden Hills Army Training Site (AHATS), Arden Hills, MN,
  2. Verify the existing utility services in the area are adequate for the new building.
  3. The team lead/architect/project manager has had a minimum of five (5) years prior experience in design and construction of similar facilities and has demonstrated such in the firm's response.

### **Services Provided by Others:**

The owner may contract directly for, or arrange to provide:

- Commissioning Agent
- Site survey, geo-technical, environmental and material testing programs
- Hazardous materials abatement survey and materials abatement
- Construction testing.
- Envelope Commissioning (by owner). Review design and observe construction of roofing, waterproofing, doors/window, wall systems. (Required for State Agency Projects).

- 1.0.2** Project Budget/Cost of Construction: \$14,500,000.00 (This cost does not include Title II services, construction testing, or contingency.)

**1.0.2** Project Schedule:

Phase	Begin	Complete
<b>Predesign</b>	<b>March 2024</b>	<b>May 2024</b>
<b>Schematic Design</b>	<b>May 2024</b>	<b>July 2024</b>
<b>Design Development</b>	<b>July 2024</b>	<b>Oct 2024</b>
<b>Construction Documentation</b>	<b>Oct 2024</b>	<b>April 2025</b>
<b>Bidding</b>	<b>May 2025</b>	<b>June 2025</b>
<b>Construction</b>	<b>July 2025</b>	<b>Oct 2026</b>
<b>Post Construction</b>	<b>Oct 2026</b>	<b>Oct 2027</b>

\*Dates subject to change

**1.0.4** Required design disciplines: Architecture, Structural engineering, Mechanical engineering, Electrical engineering, Civil engineering and Landscape Architecture.

**1.0.5** Required specialty design disciplines: Telecommunications and audio-visual/Low Voltage AV, acoustical consultant with experience designing spaces in accordance with MN Statute 16C.054, Subd. 2. (1) and (2) document., energy modeling, fire protection engineering, and interior designer.

**1.0.6** Existing infrastructure systems: Capacity upgrades to support the proposed work.

**1.0.7** Project Delivery Mode: Design, Bid, Build.

**2.0** **Responsibilities and Instruments of Service/Deliverables.** Basic Services include, but are not limited to, predesign, schematic design, design development, construction documents, bidding, construction administration, and post construction. For required Responsibilities and Instruments of Service/Deliverables see Attachments 1 through 7. All services shall be provided in accordance with the Attachments 1-7 and this Agreement.

**3.0** **Reference Documents: Services are to be provided in compliance with policies and guidelines identified below.**

**3.0.1** At a minimum, the documents shall conform to the latest adopted edition of the following Criteria/Standards:

Building Codes

- International Building Code (as adopted by the State)
- Minnesota State Building Codes
- Handicapped Accessibility Standards

Military Construction Criteria and Guides

- Design Guides 415-1 (Design Guide for Readiness Centers), 415-2 (Design Guide for Logistics Facilities), 415-3 (Design Guide for Aviation Facilities), 415-4 (Design Guide for Training Sites), 415-5 (General Facilities Information Design Guide)
- National Guard Regulations 415-5 (Military Construction – Army National Guard Program Development) and 415-10 (Army National Guard Facilities Construction)

- National Guard Bureau Pamphlets NG Pam 415-5 (Army National Guard Military Construction Program Execution) and 415-12: (Army National Guard Facilities Allowances)
- Unified Facilities Criteria – UFC 4-010-01 (DoD Minimum Antiterrorism Standards for Buildings)
- Unified Facilities Criteria – UFC 1-200-2 (High Performance and Sustainable Building Requirement)
- Site Location map

**3.0.2 Sustainability, Energy Conservation/High Performance Buildings and Systems:**

- 1) In accordance with MN Statute 16B.325, all new buildings and substantial renovations must be designed using *The State of Minnesota Sustainable Building Guidelines* (also known as B3 Guidelines), available at the State web site: <http://mn.gov/admin/business/vendor-info/construction-projects/> (or see <http://www.msbg.umn.edu/> or <http://www.b3mn.org/>).
- 2) In accordance with Minn. Stat. 16B.32 Subdivision 1: Plans for a new building or for a renovation of 50% or more of an existing building or its energy systems, must include designs which use active and passive solar energy systems, earth sheltered construction, and other alternative energy sources where feasible.
- 3) In accordance with MN Statute 16B.32 Subdivision 2: Onsite energy generation from renewable sources: Designs for a new building and/or substantial renovation, must consider meeting at least two percent of the energy needs of the building from renewable sources located on the building site. “Renewable sources” are limited to wind and the sun. The design must include an explicit cost and price analysis of complying with the two-percent (2%) requirement compared with the present and future costs of energy supplied by a public utility from a location away from the building site and the present and future costs of controlling carbon emissions. If the analysis concludes that the building should not meet at least two percent of its energy needs from renewable sources located on the building site, the analysis must provide explicit reasons why not. Reasons given for not meeting the two-percent requirement must be supported by evidence in the project record.
- 4) In accordance with MN Statute 16B.326: When the project involves new building(s), new HVAC system or replacing a HVAC system, the design must contain an analysis to document the consideration of providing Geothermal & Solar Energy Heating & Cooling Systems.
- 5) During the performance of services, schedule and coordinate with the State’s Authorized Representative to identify all viable utility rebate opportunities. Specify equipment that meets or exceeds efficiency standards and qualifications for utility rebate programs. Upgraded equipment specifications that have incremental costs covered by project budget are to be pursued. Specifications are to require that the contractor(s) shall provide necessary documentation, including invoices, required by the utility(s) for the purpose of processing and approving rebate applications, and that the contractor(s) shall work with the State’s Authorized Representative to assist the State in obtaining all possible utility rebates on the project.

**3.0.3 Indoor Air Quality/Building Environmental Quality:** Consultant designers shall provide mechanical designs (and costs into their Predesign) in accordance with “*Building Air Quality – A guide for Building Owners, Facility Managers and Agency Contacts*” (available at the State web site: [http://mn.gov/admin/images/RECS-CS-iaq\\_guide.pdf](http://mn.gov/admin/images/RECS-CS-iaq_guide.pdf)).

**3.0.4 National Pollutant Discharge Elimination System (NPDES).**

- 3.0.5 Commissioning:** The consultant designer shall incorporate the following elements of commissioning, in compliance with ASHRAE Commissioning Guideline 1.1-2007 as provided by the commissioning agent hired under separate contract by the State:
- 1) Extensive on site testing and balancing and documentation of same to assure that the stated design intent and control sequencing are in accordance with specifications.
  - 2) The contractor, in coordination with the mechanical, electrical and/or plumbing engineer(s), shall prepare a written system operations and maintenance manual that includes clear instruction and schematic drawings of affected system components and a summary ready checklist of routine maintenance. This manual will be separate from manufacturer's technical information but will extract essential information from it.
- 3.0.6 Telecommunications:** Consultant designers shall coordinate with the State, Department of Military Affairs, Facilities Management Office Information Technology staff for the design and layout of the low voltage requirements for the project. Refer to "Building Infrastructure- Best Practices for State Owned Buildings" as contained in the State's Design Guidelines; available at the State web site: <http://mn.gov/admin/business/vendor-info/construction-projects/manuals-guidelines-forms/guidelines/index.jsp>. Also refer to UFC 3-580-01 "Unified Facilities Criteria - Telecommunications Interior Infrastructure Planning and Design" at <https://www.wbdg.org/ffc/dod/unified-facilities-criteria-ufc/ufc-3-580-01>.
- 3.0.7 Electronic Instruments of Service:** The project design team shall utilize the current version of the Minnesota Department of Military Affairs, Facilities Management Office Revit Standards for Drafting as they relate to this project, to include drawing file naming conventions, level naming conventions, drafting conventions, line types/styles/weights/colors, pattern elements and font types. CADD drawings shall also include a geo-referenced site plan if applicable. The current version of the Minnesota Department of Military Affairs, Facilities Management Office Revit Standards for Drafting are available at no charge from the Project Manager at the Facilities Management Office. For projects involving existing buildings on Camp Ripley, the Owner will provide the coordinate locations for two opposite corners of each building for the design consultant's use in geo-referencing the plans.

Consultant shall provide electronic instruments of service for Revit drawings (in both RVT and Vector Graphics Based Unsecured PDF format) and specifications (in either DOC or DOCX and Text Based Unsecured PDF format) on optical disks (either compact disk/CD, or digital versatile disc or digital video disc/DVD). All Revit drawing files for each discipline, to include all attached raster image files, shall be located within a single directory or folder. Separate directories or folders may be used for each discipline. Revit drawings for all disciplines should be submitted on a single CD or DVD if possible. These electronic instruments of services shall be transmitted to the Department of Military Affairs Authorized Representative, Facilities Management Office.

- 3.0.8 MINNCOR Industries:** In accordance with MN Statute 16B.335 Subdivision 3c.: "All predesign, design, and construction projects shall include consideration of the State of Minnesota's correctional industries program, MINNCOR Industries, consistent with section 16B.181, subdivision 2, paragraph (c), in predesign planning and product specifications". Consultants shall include MINNCOR in their planning efforts. MINNCOR's web site can be found at <http://www.minncor.com>.

- 3.0.9 Basic Services Agreement:** Consultant shall provide services and instruments of service/deliverables in accordance with the State’s Basic Services Agreement (BSA). The associated services and instruments of service/deliverables have been edited to be project specific.
- 3.0.10 Consultant Performance Evaluation.** The State will evaluate the Consultant’s and/or subconsultants’ performance for work provided.
- 3.0.11 Project Energy/Utility Savings.** The Consultant shall provide designs and specifications that result in maximizing energy savings. Consultant shall complete and submit the “Project Energy/Utility Savings Form” to the State. This form is available online at <http://mn.gov/admin/business/vendor-info/construction-projects/manuals-guidelines-forms/forms/index.jsp>.
- 3.0.12 Specification:** Front-end (Division 00 – Bidding and Contract Requirements and Division 01 – General Requirements) will be provided to the Consultant in MS Word. Electronic deliverables to the State shall be in MS Word and/or pdf.
- 3.0.13** Pre-Construction Environmental Assessment and NEPA Documents will be made available upon request.

SAMPLE



**Predesign Phase**

(See Article 2)

Consultant Responsibilities and Instruments of Service

**RESPONSIBILITIES & SERVICES**

**1.0.1 Program Evaluation:** The Consultant shall provide Predesign services, including a review of the following outline of topics, in order to compile the Predesign Document for review by the State.

- A. An analysis of facility needs:
  - 1. Overall organization:
    - a. Function
    - b. Organizational structure
    - c. Sectoring and circulation
    - d. Summary of existing and projected net and gross areas.
    - e. Summary of net area requirements.
- B. Site analysis:
  - 1. Site selection and criteria selection
  - 2. Circulation and parking
  - 3. Zoning and codes
  - 4. Utilities
  - 5. Water pressure testing (static and residual)
  - 6. Topography and soils (at this phase or no later than completion of Schematic Design Phase)
  - 7. Environmental site assessment (if available)
  - 8. Soil testing for percolation capability (if applicable)
- C. Facility and Site Design Standards
  - 1. Codes
  - 2. Life Safety
  - 3. Circulation
  - 4. Security
  - 5. Structural
  - 6. Mechanical
  - 7. Electrical
- D. Building and Site Options
- E. Sustainable design to the State’s requirements per Scope of Services Paragraph 3.0.2.
  - 1. Conduct “Initial Project Charrette” for the implementation of sustainability design requirements. Follow required Compliance and Reporting Instructions.
  - 2. Establish new construction cost estimate
- F. Project Schedule

**1.0.2 Facilitate a Design Charrette :**

- 1. Location of Charrette: The Consultant shall conduct the charrette at location(s) of the State’s choosing. The Consultant shall coordinate and obtain the facility(s) for this purpose.

- 2. Length of Charrette: The charrette shall not be less than 2 days in length where the State and Consultants representatives are in attendance together.
- 3. Charrette Agenda: The Consultant will prepare an agenda to be approved by the State’s Authorized Representative at least 1 weeks prior to the start of the charrette.
- 4. Participants: The Consultant shall have all of their sub-consultants that will be responsible for work on the project in attendance at required times as established in the agenda. The State will invite members of their staff and partners in the overall project. The State will inform the Consultant on their estimated daily attendees.
- 5. Equipment: The Consultant shall provide all the equipment required to conduct the charrette including but not limited to audio/visual and computer equipment.
- 6. Food: The Consultant shall provide “working” lunches for all participants in attendance on each day of the charrette.

**1.0.3** Log on to the B3-Minnesota Sustainable Building Guidelines site and enter the project in the B3 Tracking Tool. Updated this tool throughout all phases of design and throughout construction.

**1.0.4** Should there be a need for additional services in the performance of this contract, DO NOT perform any work until a contract amendment is in place.

**INSTRUMENTS OF SERVICE / DELIVERABLES**

**1.1.1** Included in the Predesign Document shall be the following elements:

- 1. Predesign Summary Statement
- 2. Site Analysis Report(s)
- 3. Site Options
- 4. Schedule Information
- 5. Building area tabulation
- 6. Construction Cost Estimate based on current area, volume, or other unit cost
- 7. B3 documentation

**1.1.2** Distribute Project Directory of team members to include primary person contact information from design team, State, and facility personnel. Include telephone numbers, facsimile numbers, and email addresses.

**1.1.3** Outcome of Charrette: It is expected the outcome of the Design Charrette will be to produce a

Attachment 1 to Exhibit A

**Predesign Phase**

(See Article 2)

Consultant Responsibilities and Instruments of Service

quality design and meet the sustainability requirements of the State as per Scope of Services Paragraph 3.0.2 and National Guard Bureau as found in NG Pam 415-5 Chapter 11-2.

SAMPLE

Attachment 2 to Exhibit A  
**Schematic Design (SD) Phase**

(See Article 3)

Consultant Responsibilities and Instruments of Service

**RESPONSIBILITIES & SERVICES**

**2.0.1** Coordinate design activities with State and subconsultants. Establish communications hierarchy.

**2.0.2** Attend and document meetings with State to review progress of project. Request approvals when appropriate.

**2.0.3** Obtain manuals and guidelines from the State's Authorized Representative. Review and incorporate requirements into the project.

**2.0.4** Obtain the State's preliminary study and/or scope of work. Review, analyze and evaluate State's program, budget, *Estimated Cost of Construction*, and schedule. Meet and coordinate State & user agency to confirm the program of spaces, square footage requirements and scope of work. Value engineer a revised estimate to align with the program, and obtain approval sign-off from the State.

**2.0.5** Review Project Delivery methods with the State's Authorized Representative.

**2.0.6** Verify if building is on register of historic places (federal or state). Verify requirements and approval process.

**2.0.7** Work with State to establish site criteria and to review, analyze, evaluate and select site(s).

**2.0.8** Review requirements and initiate a site survey and geotechnical investigations. Recommend the extent of site survey and soil boring locations.

**2.0.9** Verify existing utility infrastructure for adequate capacity and cost upgrades needed to support the proposed building/facility or renovation.

**2.0.10** Investigate Sewer Assessment Charges (SAC) and Water Assessment Charges (WAC).

**2.0.11** Obtain the Environmental Site Assessment Survey (ESA), from the State Department of Military Affairs, and incorporate findings into the design.

**2.0.12** Coordinate and attend meetings with appropriate zoning and code officials. (State and local Building Code officials, Fire Marshal, Accessibility Council, Health Department, municipality, Pollution Control Agency, Federal unit of government).

**2.0.13** Coordinate scope of work with State's hazardous material abatement designer (if applicable).

**2.0.14** Set up CAD system per Paragraph 3.0.7 of Exhibit A above.

**2.0.15** Determine special requirements for but not limited to: mechanical, electrical, civil, voice/data communications (rough-in), structural systems and fire suppression systems.

**2.0.16** Review specialty design requirements (i.e. anti-terrorism/force protection, security, laboratory, food service, alternative energy, technology, etc.). Determine specialty construction impact on the project schedule.

**2.0.17** Obtain list of material/maker preferences and concerns from State and facility.

**2.0.18** Identify cost and schedule issues and impact: i.e., long lead times for certain material deliveries, training schedules, phasing, hazardous material abatement time, security procedures.

**2.0.19** Conduct a preliminary materials research and note materials that may require long lead times and pose schedule difficulties. Provide information on life-cycle costs of proposed materials.

**2.0.20** Format Budget, Estimated Cost of Construction & Schedule in order to track the history of costs and comparisons to the initial scope of work through future design phases.

**2.0.21** Cost Estimates are to include inflation to midpoint of construction and unique costs such as contractor downtime to work inside a secure facility, phasing costs, SAC/WAC charges, etc.

**2.0.22** Collect, analyze and organize information to prepare submittal documents. (Note: The same submittals are to be updated and submitted for subsequent DD and CD design phases).

Attachment 2 to Exhibit A  
**Schematic Design (SD) Phase**

(See Article 3)

Consultant Responsibilities and Instruments of Service

**INSTRUMENTS OF SERVICE /  
DELIVERABLES**

**2.1.1** Submit electronic (pdf and dwg files) and two copies of Schematic Design report and documents to the State's Authorized Representative for review & approval. The submittals below are to be updated for subsequent phase submittals:

**2.1.2 Drawings:**

- Cover Sheet with drawing index
- Site Plan – with all utilities & zoning requirements
- Site Analysis Plan
- Design Concept Plan
- Phasing Plan(s)
- Preliminary Code Plan(s) and Code Record
- All preliminary Demolition Plans
- All preliminary floor plans
- Principal exterior elevations (noting materials)
- Major building sections
- Preliminary mechanical, electrical and equipment and phone/data room plans. For DD submittal, note size and headroom requirements for all major mechanical, electrical, communication and data equipment per the Building Air Quality Manual and Design Guidelines.

**2.1.3 Documents** (8 ½ x 11 format –bound):

- Submittal Cover letter.
- Statement of project concept.
- Statement of key project issues as they relate to project scope, cost & schedule, including identification of risk factors, quality control and salient project features.
- Building area tabulation showing comparison to Pre-design/study.
- Statement of preliminary site & building systems
  - Site criteria and selection systems/utilities
  - Building envelope
  - Structural system
  - Mechanical systems
  - Preliminary Energy analysis summary
  - Alternative energy uses & associated systems
  - Preliminary Life-cycle cost comparisons of major systems (envelope, structural, mechanical, piping, electrical)
  - Commissioning Plan
- Sustainable design goals and strategies
- Estimated Cost of Construction
- Statement of Value Engineering
- Preliminary bar chart schedule, with critical path and dates noted. Include all State agency, State's Authorized Representative, legislative, quality

project and criteria review times. Include State's hazardous material abatement schedule.

- Primary materials being proposed
- Submit Schematic Design Documents to the Minnesota State Historical Society (if applicable)
- *The State of Minnesota Sustainable Building Guidelines* submittals and item variance requests.
- *Design Guidelines* item variance requests

**2.1.4** Update Project Directory of primary person contact information from design team, State, user agency. Include phone numbers, fax numbers, email addresses.

**2.1.5** Distribute all meeting minutes. Record decisions.

**2.1.6** Options based analysis of site selection. Include criteria matrix of site options and recommended site.

**2.1.7** Recommendations of existing systems upgrade based on life-cycle cost analysis.

**2.1.8** Provide the State a site survey and/or geotechnical soil borings and report. Minimum requirements are to include legal description, property lines, topographic contours, benchmarks, all utilities, any easements, adjacent roads & highways, foliage/landscaping, existing buildings with heights and materials.

**2.1.9** Provide the State soil percolation test report and recommendations (if applicable).

**2.1.10** Provide a statement that the existing utility infrastructure systems have/do not have sufficient capacity to support the added/upgraded systems that are proposed for the project.

**2.1.11** Submit a Preliminary Application for Plan Review to the State Division of Building Codes and Standards.

**2.1.12** Submit SD Phase deliverables:

- Project Summary with Cost Estimate, Tabulation of spaces and square footages
- Issues and risks to budget and schedule
- Narrative of major systems
- SD Plans, Specs – outline version

Attachment 3 to Exhibit A  
**Design Development (DD) Phase**

(See Article 4)

Consultant Responsibilities and Instruments of Service

**RESPONSIBILITIES & SERVICES**

**3.0.1** Continue to administer the project work and coordination with agency, facility, State's Authorized Representative and design team to develop the design. Confirm space program with State/user agency.

**3.0.2** Update the Estimated Cost of Construction and building program and areas and submit in table format showing comparisons to original Predesign or study and to Schematic Design. Value Engineer as needed to maintain project cost. Determine bid items.

**3.0.3** During DD, the site design is refined, the plans, sections, elevations, etc. are drawn to scale, principle dimensions are noted, the structural system is laid out, and major mechanical and electrical components and distribution routes are located. Critical interior spaces are drawn and elevated for review, and preliminary specifications assembled.

- Coordinate space needs of mechanical, electrical, data/communication equipment rooms to be adequate in size and location.
- Coordinate layout of all building systems with each discipline.
- Identify utility needs for the project, and investigate the availability of needed services.
- Determine the need for on-site wells, sewage systems, storm drains, etc. and report these needs to State.
- Meet with the State's Authorized Representative to review equipment and maintenance access.

**3.0.4** Obtain and review State's response/comments to SD documents and incorporate comments into the design.

- 3.0.5** Update the project schedule to include:
- critical paths
  - long lead times
  - state review times
  - quality control review times (estimate approx. 1 month review time and 2 wks to incorporate changes).
  - construction phasing down time/remobilization

**3.0.6** Meet with MINNCOR Industries to determine potential products that can be specified to be provided.

**3.0.7** All data, communications and information technology, including infrastructure and devices, are to be designed and specified under this contract and under the direction of the State's Authorized Representative.

**3.0.8** Meet with and coordinate the State's intentions regarding Furniture, Fixtures and Equipment (FF&E).

**3.0.9** Coordinate scope of work with State's hazardous material abatement designer (if applicable).

**3.0.10** Schedule and conduct meetings to present, confirm and finalize material and finish selections with the State's Authorized Representative.

**3.0.11** Submit a preliminary application to the Department of Labor & Industry for code review and inspections. Meet with the authority having jurisdiction on codes. Meet with the Department of Health having jurisdiction on sewer systems and Supportive Living Facilities/nursing homes.

**3.0.12** For new buildings, additions and major renovations, coordinate with the State's hired 3rd party commissioning agent to commission the major HVAC, electrical, boiler, systems. Commissioning is to begin during design for peer review of Consultant design and carry over into commissioning during construction.

**INSTRUMENTS OF SERVICE / DELIVERABLES**

**3.1.1** Meeting minutes.

**3.1.2** Letter response that all SD review comments will be / have been incorporated into the documents. Provide written explanation for any review comments not incorporated into the documents. Confirm elements, scope, cost and schedule, and any adjustments, with the State.

**3.1.3** Updated Schematic Design Instruments of Service/Deliverables, paragraphs 2.1.1 through 2.1.4. Updates to program areas, scope, cost and schedule are to be a tabulated comparison.

**3.1.4** DD submittal shall also include the following: Review distribution and number of electronic (pdf and dwg files) and bound copies with State.

- Room finish schedules indicating materials.
- Materials/Finish Color schedules.
- Preliminary Project Manual with outline specifications for all disciplines including bidding requirements, conditions of the contract, etc.
- List of products to be provided by MINNCOR Industries.

Attachment 3 to Exhibit A  
**Design Development (DD) Phase**

(See Article 4)

**Consultant Responsibilities and Instruments of Service**

- Civil Plans showing any new or increased utilities, on-site wells, retention ponds, hydrants, manholes, etc.
- Architectural interior plans and elevations of critical and special interior spaces.
- FF&E (Furniture, Fixtures & Equipment) Plans
- Catalog cut-sheets of finish equipment and fixtures.
- Technology and data/communication plans.
- List of products qualifying for utility rebates with expected rebate amounts.
- Selection of alternative energy systems.
- Selection of alternates for bidding.
- 3-dimensional representation of the project. Include perspectives (interior and exterior), models and computer generated 'walk-throughs'.

**3.1.5** Written request identifying independent construction testing services required.

**3.1.6** Submit a set of updated plan drawings to the State's Authorized Representative in sufficient detail to determine scope and cost of hazardous material abatement required in order to accommodate the work. (Abatement work to be done under separate contract). (if applicable)

**3.1.7** Include requirements in specifications for State's 3rd party Commissioning Agent and HVAC/Electrical/Boiler Commissioning Agent. Specify pre-installation and mock-up conferences on site. Coordinate with the State on scope of services and schedules, preparation of RFPs, and selection of 3rd party services.

Attachment 4 to Exhibit A  
**Construction Documents (CD) Phase**

(See Article 5)

Consultant Responsibilities and Instruments of Service

**RESPONSIBILITIES & SERVICES**

**4.0.1** Continue to administer the project work and coordinate with State's Authorized Representative and design team to finalize the design.

**4.0.2** Update and confirm space program, scope, cost and schedule with State's Authorized Representative.

**4.0.3** Obtain and review State's DD review comments on submittal documents and incorporate comments into CDs.

**4.0.4** Review progress of documents in meeting with State's Authorized Representative at 50% and 90% stage of completion.

**4.0.5** Prepare final drawings, specifications, conditions of the contract and bidding requirements based on approved DD documents and in sufficient detail for bidding and construction of the project.

**4.0.6** Review specifications to avoid sole source manufacturers and provide designs to obtain more competitive bidding while remaining compatible with existing installations. Assist the State in preparing sole source approval documentation prior to 50% completion.

**4.0.7** Schedule final code review meeting with the Authority having Jurisdiction and schedule meeting with Dept. of Health for review of projects involving sewer work. Prepare final building code analysis and update the Code Record and Code Plan(s).

**4.0.8** Finalize the Estimated Cost of Construction; value engineer as required to maintain allocated and approved budget.

**4.0.9** Identify construction and special testing needs and communicate to the State's Authorized Representative. Quality assurance testing shall be indicated in each specification division; defining the type of test and method; test frequency; test pass/fail tolerance; and action required for failed tests.

**4.0.10** Conduct final review of the State's *Design Guidelines* for inclusion into documents.

**4.0.11** Review HARDWARE /keying with the State's Authorized Representative prior to publishing for bids.

**4.0.12** Obtain from the State's Authorized Representative and edit the Division 00 Sections and related Construction Contract forms to be included in the Project Manual. Assign a Section number and list the documents in the Table of Contents.

**4.0.13** Coordinate with the State/facility manager to schedule a Pre-bid conference. Attend and document the conference.

**4.0.14** For projects exceeding \$1,000,000 construction cost, schedule a time period for a Quality Control Review (i.e. by RediCheck International) on 100% construction documents by an independent third party.

**4.0.15** Certify Construction Documents for bidding and construction.

**4.0.16** Obtain the State's sign-off on plans and specs.

**INSTRUMENTS OF SERVICE /  
DELIVERABLES**

**4.1.1** Meeting minutes.

**4.1.2** Letter response that all SD & DD review comments have been incorporated into the documents. Provide written explanation for any review comments not incorporated into the documents. Confirm elements, scope, cost and schedule.

**4.1.3** Updated Schematic Design and Design Development Instruments of Service/Deliverables. Updates to program areas, scope, cost and schedule are to be a tabulated comparison. Provide two total cost estimates; one by Construction Specifications Institute (CSI) division and one by bid item. Submit 50% and 90% complete documents.

**4.1.4** Submit electronic (pdf and dwg files) and two copies of Construction Documents to the State's Authorized Representative for review & approval.

**4.1.5** Written responses to regulatory/legal reviews or inquiries (i.e., code officials, Health Department, Pollution Control Agency, Municipality, Federal agency).

**4.1.6** Include Sustainable design elements/products incorporated into the project.

Attachment 4 to Exhibit A

**Construction Documents (CD) Phase**

(See Article 5)

Consultant Responsibilities and Instruments of Service

**4.1.7** Provide the State written documentation justifying code items in excess of criteria.

**4.1.8** Edit the State's Division 00 front end documents as directed (Advertisement for Bids, Bid Proposal Forms, etc.)

- Provide total cost estimate by Construction Specifications Institute (CSI) division and by bid item.
- Substantial Completion date and liquidated damages
- Alternates and Unit Prices including descriptions/definitions
- Include allowances (if applicable)
- Complete Bid Request Form for Targeted Group Goal requirement
- Security requirements for contractors

**4.1.9** Submit 100% complete set of documents (plans & specs) to third party. Incorporate third party Quality Control Review comments into documents. Submit documentation of review and comments.

**4.1.10** Submit a 100% completed set of documents to the Minnesota State Historical Society. Provide written documentation of the review and comments to State. (if applicable)

**4.1.11** Include all design professionals' CERTIFICATION SIGNATURES on drawings and on a signature sheet in the Project Manual.

SAMPLE



**Bidding Phase**

(See Article 6)

**Consultant Responsibilities and Instruments of Service**

**RESPONSIBILITIES & SERVICES**

**5.0.1** Accurate and complete construction documents prepared in order to receive accurate bids with a minimum of change orders. Approval for bidding will be dependent upon:

- a. the appropriate level of completion of contract documents and
- b. A/E Estimated Cost of Construction being in conformance with the State's allocated construction cost.

**5.0.2** Coordinate with State's Authorized Representative to schedule a Pre-bid conference for publishing in the ad for bids; coordinate date and time with user Agency and State's Authorized Representative.

**5.0.3** Reproduce Bid Documents (drawings and specifications) as specified in 5.1.2.

**5.0.4** Contact contractors in the project area to increase interest in the project.

**5.0.5** Respond to contractor inquiries, review manufacturer/supplier requests for prior approvals/substitutions with State's Authorized Representative and prepare addenda as needed. (See Article 6.3 of BSA)

**5.0.6** Conduct a Pre-bid conference.

**5.0.7** Attend bid opening, review bids and provide State with written recommendation to award or not to award the contract to a particular bidder.

**5.0.8** Prepare and submit to the State complete sets of documents.

**5.0.9** Use of Owner Provided Project Management Software:

- a. The Consultant shall complete three (3) hours of online training in preparation for use of Owner provided project management software.
- b. The Consultant shall upload and maintain a complete set of Bid documents (plans and specifications) throughout the Bidding phase to include all Addenda and related documentation

**INSTRUMENTS OF SERVICE / DELIVERABLES**

**5.1.1** Provide the State's Authorized Representative copies of all addenda that document bidding activity.

**5.1.2** Provide the bid documents to the Agency for upload into the State's Online bidding site and submit the following number of complete sets of bid documents including contract and bidding forms as follows:

- (2) State's Authorized Representative (one full size and one half-size set)
- (1) Each Facility
- (2) Division of State Building Codes and Standards or designated code authority having jurisdiction. Submit Final Application for Plan Review. Include Code Plans and Code Record with Contract Documents.
  - (1) Local/ municipal code official
  - (1) Minnesota Department of Health
  - (1) Metro Council (SAC/WAC charges)
  - (2) Fire Marshal (w / jurisdiction)
  - (1) Minnesota State Historical Society and/or State Historic Preservation Office (SHPO) (if applicable).
  - (1) MINNNCOR for bidding of furniture and/or millwork. (If project has significant scope of furniture or millwork).

Others as required for project review/approval.

**5.1.3** Respond, in writing, to review comments received from State Building Codes & Standards, Fire Marshal, Department of Health, Local Code Authority, Pollution Control Agency, or other regulatory authority.

**5.1.4** Assist the State's Authorized Representative in preparing) Pre-bid conference and conduct (if applicable).

**5.1.5** Assist in determination of award of project.

**5.1.6** If low bid proposal amount exceeds Estimated Budgeted Cost of Construction/available funds; provide redesign and rebid to bring project within budget. Coordinate changes or value engineering with the State's Authorized Representative.

**5.1.7** Submit updated one half-size set and compact disk(s) (pdf and dwg files) containing Construction Documents that include all Addenda, changes or clarifications that were made/issued during the bidding period.

**5.1.8** Upload Bid documents (plans and specifications) to Owner provided project management software.

**Construction Phase**

(See Article 7)

Consultant Responsibilities and Instruments of Service

**RESPONSIBILITIES & SERVICES**

**6.0.1** Using the State's Pre-construction Conference Form, schedule, coordinate and conduct a Pre-Construction conference.

**6.0.2** Administer the construction contract according to the terms, conditions, and provisions of the contract documents. Interpret the requirements of the contract documents. Advise the State concerning performance of the Contractor. Respond to Contractor questions.

**6.0.3** Represent, advise, and consult with the State. Communicate with construction contractor(s) on behalf of the State. Communicate State's instructions to construction contractor(s).

**6.0.4** Observe construction and keep State informed of progress. Evaluate and record work progress. Perform construction observation visits at times appropriate to the stage of the work. Provide site visits and necessary work in order to interpret and clarify designs to the contractor. Immediately inform State of any nonconforming work.

**6.0.5** Monitor events (weather, material delivery, etc) that may prompt a delay in the project. Validate Contractor Delay Claims per AIA Doc A201.

**6.0.6** Review and certify contractor's periodic (monthly) pay requests.

**6.0.7** See Division 01 for contractor closeout submittals required prior to final payment.

**6.0.8** Schedule and conduct recurring and special construction progress, status, and coordination meetings.

**6.0.9** Prepare documentation for all clarifications and changes in the construction work. Record reason for change (Reason and Justification) using the following categories:

- Consultant Coordination
- State's Request
- Unforeseen conditions
- Value added quality

Prepare independent Cost Estimate, and Negotiation Memorandum on forms provided by the State.

**6.0.10** Use of Owner Provided Project Management Software: The Consultant shall utilize Owner provided

project management software to administer the requirements of the Contract.

**6.0.11** Designers of record are to hold pre-installation conferences with the contractor(s) on critical systems/assemblies.

**6.0.12** Schedule and Conduct an *above ceiling inspection* prior to installation of the ceiling. Mechanical and Electrical subconsultants are to inspect all installations for conformance to the contract documents.

**6.0.13** Maintain changes for electronic Drawings of Record.

**6.0.14** Conduct substantial completion inspection of the construction.

**6.0.15** Coordinate and conduct final inspection.

**6.0.16** Review Operations and Maintenance Manuals and warranties for completeness.

**INSTRUMENTS OF SERVICE / DELIVERABLES**

**6.1.1** Conduct and distribute meeting notice, agenda and minutes.

**6.1.2** Issue Clarifications, responses to RFIs and/or RFPs as required to achieve the intent of the design.

**6.1.3** Construction observation reports [one per visit per discipline (architectural, civil, structural, electrical, mechanical, etc.). Document work progress relative to the schedule. Distribute a schedule of site visits by subconsultants. Architects are required to attend onsite construction meetings biweekly.

**6.1.4** Notify the State of any claims related to additional time or cost submitted by the contractor. Review & recommend any time extension claims. Make interpretations and recommendations to the State on additional costs, delay claims, time extensions, nonconforming work, and stop work notice. Respond to contractor regarding these issues.

**6.1.5** Timely response & return of contractor shop drawings and submittals.

**6.1.6** Submit contractor's Request for Payment after being certified by Consultant A/E of Record.

Attachment 6 to Exhibit A

**Construction Phase**

(See Article 7)

Consultant Responsibilities and Instruments of Service

**6.1.7** For each meeting, provide and distribute Meeting notice, agenda and handouts.

**6.1.8** Obtain all documentation from the construction contractor for utility rebates and provide to the State's Authorized Representative.

**6.1.9** Verify receipt of closeout submittals prior to approving final payment to the contractor.

**6.1.10** Verify pricing submitted by contractor is detailed with units of material and labor. i.e.

Material: 118 LF of ¾" copper piping X \$2.05 LF

Labor: 8 hrs X \$65 /Hr

**6.1.11** Prepare and issue:

- Proposal requests (PR's).
- Supplemental Instructions (SI's).

**6.1.12** Utilize Owner provided project management software to support the following: maintenance of current drawings and specifications, project photographs, processing of Requests for Information, processing of product data and submittals, closeout punch list, and other processes as required by Owner.

**6.1.13** Report for Punchlist/Certificate of Substantial Completion Inspection findings.

**6.1.14** Updated electronic specifications and drawings of record.

**6.1.15** Drawings and Documents to be submitted for this phase are the same SD, DD, CD submittals only with all information finalized.

**6.1.16** Final Inspection report and verification of punchlist completion.

**Post Construction Phase**

(See Article 8)

Consultant Responsibilities and Instruments of Service

**RESPONSIBILITIES & SERVICES**

**7.0.1** Coordinate and collect information for warranty and operational manuals. Review Operations and Maintenance Manuals for completeness.

**7.0.2** Receive and review as-built drawings and specifications from the contractor. Verify that all addenda, supplemental agreement (change order) work, and supplemental instructions, are included.

**7.0.3** Incorporate all as-built changes onto electronic drawings and specifications.

**7.0.4** The AutoCAD drawing format shall meet State's Guidelines in Exhibit A, Paragraph 3.0.7.

**7.0.5** Schedule and conduct a ten month pre-expiration warranty inspection.

**7.0.6** The one year warranty period begins on the date of Substantial Completion.

**7.0.7** Sustainability / High Performance / Commissioning: Review Commissioning requirements with the State's Authorized Representative. Complete the commissioning process as required for new buildings funded after January 1, 2014, per "The State of Minnesota Sustainable Building Guidelines". The commissioning is to occur after the 10 month warranty period or after completion of a full year of operation, whichever is last.

**INSTRUMENTS OF SERVICE / DELIVERABLES**

**7.1.1** Submit shop drawings, Operation and Maintenance Manuals, and warranties, to the State.

**7.1.2** Verify that the State has received material stock, as specified, from the contractor.

**7.1.3** Submit Electronic (pdf and dwg files) and hard copy documents as follows:

- **Record Drawings and Specifications**
  - Incorporate all Supplemental Agreements (change orders) into the plans and specifications.
  - Incorporate contractor's as-built changes into the plans and specifications.
- Submit one (1) electronic and one (1) hardcopy of the Record drawings and specifications to the State's Authorized Representative.

- **Operations and Maintenance Manuals.** Submit the following to the State's Authorized Representative:

- Two (2) hard copies of Operations and Maintenance Manuals.
- Two (2) electronic compact disks (CDs).

**7.1.4** Written report of final and ten month inspections from architects and engineers of record. For ten month inspection, include summary of corrections to be made. Forward copies to the State's Authorized Representative, and the prime contractor.

**7.1.5** In accordance with "The State of Minnesota Sustainable Building Guidelines" submit the "Final Compliance Summary Form" for the project.

EXHIBIT B  
CONSULTANT COMPENSATION

Consultant Services for  
Department of Military Affairs Army Combat Fitness Test (ACFT)  
Field House, Arden Hills, MN (Project No. 24107)

SAMPLE

**EXHIBIT B**  
**CONSULTANT COMPENSATION**

BUDGETED COST OF CONSTRUCTION: \$14,500,000.00.

CONTRACT ARTICLE	PHASE	% OF PHASE	AMOUNT NOT TO EXCEED FEE
Article 2	Pre-Design Phase	100%	
<b>TOTAL FEE FOR SERVICE</b>			\$0.00 ____ % *
Article 3	Schematic Design Phase	15%	\$0.00
Article 4	Design Development Phase	20%	\$0.00
Article 5	Contract Documents Phase	60%	\$0.00
Article 6	Bidding Phase	5%	\$0.00
<b>TOTAL FEE FOR TITLE I (TYPE B) SERVICES</b> <i>(ARTICLES 3 THROUGH 6 MUST NOT EXCEED 6% OF THE ESTIMATED CONSTRUCTION COST)</i>			\$0.00 ____ % *
Article 7	Construction Phase	95%	\$0.00
Article 8	Post Construction Phase	5%	\$0.00
<b>TOTAL FEE FOR TITLE II (TYPE C) SERVICES</b>			\$0.00 ____ % *

Refer to the Contract for detailed description of Reimbursable Expenses and Direct Expenses.

\* The final fee percentages will be used for determination of equitable fee adjustment(s) as per Article 9.3 of the Basic Services Agreement.

EXHIBIT C  
INSURANCE REQUIREMENTS

Consultant Services for  
Department of Military Affairs Army Combat Fitness Test (ACFT)  
Field House, Arden Hills, MN (Project No. 24107)

SAMPLE

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

- A. The Contractor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contractor shall maintain such insurance in force and effect throughout the term of the Contract.
- B. The Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Except as provided below, the Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, the 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 - Bodily Injury by Disease per employee  
\$500,000 - Bodily Injury by Disease aggregate  
\$100,000 - Bodily Injury by Accident

If Minnesota Statute 176.041 exempts the Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, the Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes the Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

2. **Commercial General Liability Insurance:** The Contractor is 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 the Contractor or by a subcontractor or by anyone directly or indirectly employed under the 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 shall be included:

Premises and Operations Bodily Injury and Property Damage  
Personal & Advertising Injury  
Blanket Contractual Liability  
Products and Completed Operations Liability  
State of Minnesota, named as an Additional Insured, to the extent permitted by law



3. **Commercial Automobile Liability Insurance:** The Contractor is required to maintain insurance protecting the 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 maintain Commercial Automobile Liability. Insurance **minimum** limits are as follows:

\$2,000,000 - 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

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance:** This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Contractor's professional services required under this Contract.

The Contractor is required to carry the following **minimum** amounts:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and the Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by the Contractor to fulfill this requirement.

C. **Additional Insurance Conditions:**

- The Contractor's policy(ies) shall 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 Contractor's performance under this Contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- The Contractor is responsible for payment of Contract related insurance premiums and deductibles;

- If the Contractor is self-insured, a Certification of Self-Insurance must be provided the State;
  - Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4. above;
  - Contractor shall obtain insurance policy(ies) from insurance company(ies) 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; and
  - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.
- D. The State will reserve the right to immediately terminate the Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to State's authorized agent upon written request.
- E. The Contractor is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the Contract.

SAMPLE

EXHIBIT D  
SPECIAL CONDITIONS FOR CONTRACT WORK  
INVOLVING FEDERAL FUNDS

Consultant Services for  
Department of Military Affairs Army Combat Fitness Test (ACFT)  
Field House, Arden Hills, MN (Project No. 24107)

SAMPLE

**EXHIBIT D**  
**SPECIAL CONDITIONS FOR CONTRACT WORK**  
**INVOLVING FEDERAL FUNDS**

This Contract is incidental to the implementation of a Federal program and the Federal funding for this Contract is provided in whole or in part through a master cooperative agreement between the National Guard Bureau and the Minnesota Department of Military Affairs. Accordingly, Contractor is required to comply with and incorporate into its contracts with any subcontractors the following provisions in the performance of the Contract.

To the extent applicable, the State is required to insert the substance of the following provisions in all contracts, unless State laws or regulations offer more protection.

**Section 801. Applicable Law.**

This MCA is incidental to the implementation of a Federal program. Accordingly, this MCA and associated appendices shall be governed by and construed according to federal law as it may affect the rights, remedies, and obligations of the United States.

**Section 802. Governing Regulations.**

**Title 2 Code of Federal Regulations (CFR) Part 200**, current NGB-AQ policy, NGR 5-1 or successor CNGB I & M, are hereby incorporated into this MCA by reference as if fully set forth herein and shall govern this Agreement. Attachment A consists of those provisions of part 200 which are terms & conditions commonly applicable to NGB assistance instruments.

**Section 803. Nondiscrimination.**

The Grantee covenants and agrees that no person shall be subject to discrimination or denied benefits in connection with the State's performance under the MCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with the following national policies prohibiting discrimination:

a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.

b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.

d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.

e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR Part 56.

**Section 804. Lobbying.**

a. The state covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Appendix.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

#### **Section 805. Drug-Free work Place.**

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

#### **Section 806. Environmental Protection.**

a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA));
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
- (2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
- (3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
- (4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
- (5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

### **Section 807. Use of United States Flag Carriers.**

a. The state covenants and agrees that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The state agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

### **Section 808. Debarment and Suspension.**

**Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.** The grantee agrees to comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The grantee and subrecipients shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the grantee and subrecipient contract files, and shall be subject to audit by the grantor and Federal/State audit agencies

### **Section 809. The Infrastructure Investment and Jobs Act (“IIJA”).**

Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that the head of each Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

### **Section 810. Uniform Relocation Assistance and real Property Acquisition Policies**

The state covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

### **Section 811. Copeland “Anti-Kickback” Act.**

The state covenants and agrees that it will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

### **Section 812. Contract Work Hours and Safety Standards Act.**

The state covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

## Section 813. System for Award Management and Unique Entity Identifier Requirements

The Grantee covenants and agrees to comply with the System for Award Management (SAM) and Unique Entity Identifier Requirements (UEI) as indicated below:

a. Requirement for SAM. You as the recipient must maintain the currency of your information in SAM until you submit the final financial report required under this Agreement or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for UEI ID. If you are authorized to make subawards under this Agreement, you:

(1) Must notify potential subrecipients that no entity (see definition in paragraph (c) of this Agreement term) may receive a subaward from you unless the entity has provided its UEI number to you; and

(2) May not make a subaward to an entity unless the entity has provided its UEI number to you.

(3) Definitions. For purposes of this Agreement:

(a) SAM means the official U.S. Government system that consolidated the capabilities of CCR and EPLS. There is NO fee to register in SAM. Entities may register at no cost at the current OMB website. Additional information about registration procedures, updating your recipient account, searching records, as well as user guides and helpful hints may be found at the SAM website.

1. If you had an active record in CCR, you have an active record in SAM. You do not need to do anything in SAM at this time, unless a change in your business circumstances requires updates to your Entity record(s) in order for you to be paid or to receive an award or you need to renew your Entity(s) prior to its expiration. SAM will send notifications to the registered user via email 60, 30, and 15 days prior to expiration of the Entity. To update or renew your Entity records(s) in SAM you will need to create a SAM User Account and link it to your migrated Entity records. You do not need a user account to search for registered entities in SAM by typing the UEI number or business name into the search box.

(b) The Unique Entity ID (UEI) is assigned automatically to entities when they request a Unique Entity ID or register on SAM.gov.

(c) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

1. A Governmental organization, which is a State, local Government, or Indian Tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization; and
5. A Federal Agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

(4) Subaward:

(a) This term means a legal instrument to provide support for the performance of any portion of the substantive project or Program for which you received this Agreement and that you as the recipient award to an eligible subrecipient.

(b) The term does not include your procurement of property and services needed to carry out the project or Program.

(c) A subaward may be provided through any legal Agreement, including an Agreement that you consider a contract.

(5) Subrecipient means an entity that:

(a) Receives a subaward from you under this Agreement; and is accountable to you for the use of the Federal funds provided by the subawards

## Section 814. Reporting Subawards and Executive Compensation

The Grantee covenants and agrees to comply with the Reporting Subawards and Executive Compensation requirements indicated below:

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

- i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

- i. the total Federal funding authorized to date under this award is \$25,000 or more;
- ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <http://www.ccr.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

- i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. Subawards, and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in **2 CFR Part 200**:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;



- iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
3. Subaward:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program.
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. Subrecipient means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax-qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

EXHIBIT E  
LIST OF PERSONNEL AND SUBCONSULTANTS

Consultant Services for  
Department of Military Affairs Army Combat Fitness Test (ACFT)  
Field House, Arden Hills, MN (Project No. 24107)

SAMPLE

EXHIBIT E  
LIST OF PERSONNEL AND SUBCONSULTANTS

The Consultant will accomplish the complete work described in EXHIBIT A, Scope of Services, with the following personnel:

Personnel:

Subconsultants:

SAMPLE