

STATE OF MINNESOTA

PROFESSIONAL AND TECHNICAL SERVICES CONTRACT

This contract is between the State of Minnesota, acting through its commissioner of Administration, Real Estate and Construction Services, 309 Administration Building, 50 Sherburne Ave., St. Paul, MN 55155 ("State") and "**Consultant Company Name**", "**Consultant Street Address**", "**City, State, ZIP**" ("Consultant").

Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of "architectural, testing, engineering" services.
3. The Consultant represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

Contract

1. Term of Contract

- 1.1 **Effective date:** Upon the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2.
The Consultant must not begin work under this contract until this contract is fully executed and the Consultant has been notified by the State's Authorized Representative to begin the work.
- 1.2 **Expiration date:** "**Estimated Contract End Date**", or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property; 14. Publicity and Endorsement; 15. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

2. Consultant's Duties

The Consultant, who is not a state employee, will perform the duties of "**Consultant Duties**" for "**Facility Name and Address**" and "?????" as described in attached Exhibit A dated "Exhibit A creation date", which is incorporated into this contract. No terms and conditions of the Consultant's proposal will be construed to modify, diminish or derogate the terms and conditions of this contract.

A Schedule of Reimbursable Expenses is attached as Exhibit B. Consultant shall submit an estimated breakdown of Project Reimbursable Expenses for approval by the State. Paragraph 4.1(B) provides for funding for approved reimbursable expenses, which shall be reimbursed at cost unless otherwise provided in paragraph 4.1(B).

3. Time

The Consultant must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence.

4. Consideration and Payment

4.1 **Consideration.** The State will pay for all services performed by the Consultant under this contract as follows:

(A) **Compensation.** The Consultant will be paid an amount not to exceed "Consultant's Fee" as provided in attached Exhibit A dated "Exhibit A creation date", which is incorporated into this contract.

Reimbursement Expenses. The Consultant will be paid an amount not to exceed "Consultant Reimbursement Expense" for printing, delivery & bid advertisement expenses actually and necessarily incurred by the consultant as a result of this contract.

Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Consultant in the course of this contract will not be reimbursed. In the event these expenses are reimbursed, they shall be reimbursed in the same manner and in no greater amount than provided in the current "commissioner's Plan" promulgated by the Commissioner of Employee Relations, which is incorporated in

the contract by reference. A copy of the Commissioner's Plan is available on the Web at: <http://www.mmb.state.mn.us/doc/comp/contract/CommissionersPlan.pdf>. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(B) Total Obligation. The total obligation of the State for all compensation and reimbursements to the Consultant under this contract will not exceed "Total Contract Amount".

4.2. Payment

(A) Invoices. The State will promptly pay the Consultant after the Consultant presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

Calendar month for work completed. Each pay request should only include work from the calendar month in which it was performed. Invoice shall be submitted on State's "CONSULTANT Pay Request" form. A copy of the form is available on the Web at www.admin.state.mn.us/recs.

(B) Retainage. Under Minn. Stat. § 16C.08, subd. 5(b), no more than 90% of the amount due under this contract may be paid until the final product of this contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Consultant has satisfactorily fulfilled all the terms of this contract. This paragraph does not apply to contracts for professional services as defined in sections Minn. Stat. §§ 326.02 to 326.15.

(C) Federal funds. (Where applicable, if blank this section does not apply.) Payments under this contract will be made from federal funds obtained by the State through Title _____ CFDA number _____ of the _____ Act of _____. The Consultant is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Consultant's failure to comply with federal requirements.

5. Conditions of Payment

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

6. Authorized Representative

The State's Authorized Representative is "**Project Manager**" at "**PM 10 digit phone number**" or **Gordon Christofferson**, or his/her successor, and has the responsibility to monitor the Consultant's performance and the authority to accept the services provided under this contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Consultant's Authorized Representative is "Contact Person's Name" at "Contact Person Phone", or his/her successor. If the Consultant's Authorized Representative changes at any time during this contract, the Consultant must immediately notify the State.

7. Assignment, Amendments, Waiver, and Contract Complete

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

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

7.3 Waiver. If the State fails to enforce any provision of this contract, that failure does not waive the provision or

its right to enforce it.

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

8. **Indemnification**

In the performance of this contract by Contractor, or Contractor's agents or employees, the contractor 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 Contractor'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 Contractor may have for the State's failure to fulfill its obligation under this contract.

9. **State Audits**

Under Minn. Stat. § 16C.05, subd. 5, the Consultant's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this contract.

10. **Government Data Practices and Intellectual Property**

10.1. **Government Data Practices.** The Consultant and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Consultant under this contract. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 referred to in this clause by either the Consultant or the State.

If the Consultant receives a request to release the data referred to in this Clause, 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.

10.2. **Intellectual Property Rights.**

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

(B) **Obligations**

- (B.1) **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Consultant, including its employees and subConsultants, in the performance of this contract, the Consultant will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- (B.2) **Representation.** The Consultant must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Consultant nor its employees, agents, or subConsultants retain any interest in and to the Works and Documents. The Consultant represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Consultant will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Consultant's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Consultant will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Consultant's or the State's opinion is likely to arise, the Consultant must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11. Workers' Compensation

The Consultant certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Consultant's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

12. 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.

13. 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 Contractor 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. Contractor's certification is a material representation upon which the contract award was based.

14. Publicity and Endorsement

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

14.2 **Endorsement.** The Consultant must not claim that the State endorses its products or services.

15. Governing Law, Jurisdiction, and Venue

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

16. Data Disclosure

The Consultant consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws, which could result in action requiring the Consultant to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17. Payment to Subcontractors

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

18. Termination

18.1 Termination by the State. The State or commissioner of Administration may cancel this contract at any time, with or without cause, upon 30 days' written notice to the Consultant. Upon termination, the Consultant will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

18.2 Termination for Insufficient Funding. The State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Consultant. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Consultant will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Consultant notice of the lack of funding within a reasonable time of the State's receiving that notice.

19. Minn. Stat. § 181.59

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

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 Consultant agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Consultant, 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 Consultant, 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.

20. Affirmative Action Requirements for Contracts in Excess of \$100,000 and Discrimination the Consultant has More than 40 Full-time Employees in Minnesota or its Principal Place of Business

The State intends to carry out its responsibility for requiring affirmative action by its Consultants.

- 20.1 ***Covered Contracts and Consultants.*** If the Contract 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.
- 20.2 ***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.
- 20.3 ***Minn. R. 5000.3400-5000.3600.***
- (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.
- (B) ***Disabled Workers.*** The Consultant must comply with the following affirmative action requirements for disabled workers.
- (B.1) The Consultant 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.
- (B.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.
- (B.3) In the event of the Consultant's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (B.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.
- (B.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 Minn. Stat. § 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.
- (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 contract by the Commissioner or the State.
- (D) ***Certification.*** The Consultant hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

21. Insurance: See Exhibit D, which is attached and incorporated herein.

22. **Foreign Outsourcing** Consultant agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form, Exhibit F, submitted with its proposal are true and accurate.

23. **Contractor's/Vendor's Employee Status (Immigration Status Certification)**

By order of the Governor's Executive Order 08-01, if the contract resulting from this solicitation/RFP, including any extension options, is or could be in excess of \$50,000, Contractor MUST certify that it and its subcontractors:

1. Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
2. By the date of the performance of services under this contract, Contractor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

Using Exhibit J – Immigration Status Certification, the Contractor shall certify compliance with this section and shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this contract. Subcontractor certifications shall be maintained by Contractor and made available to the state upon request. If Contractor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the contract, the state reserves the right to determine what action it may take including but not limited to, cancelling the contract and/or suspending or debaring the contractor from state purchasing.

24. **CAD (Computer Aided Drafting):** When electronic CAD drawings are being produced in the performance of, or as a deliverable of this contract the contractor shall comply with the State's "*CAD Guidelines*" available at the RECS web site: <http://www.admin.state.mn.us/recs/cs/mg-cadd-toc.html>.

25. **Other Provisions:** Using Exhibit K, the State will evaluate the Consultant's and/or subconsultants' performance for work provided under this contract.

26. **Schedule of Exhibits:**

The following exhibits are incorporated herein.

Exhibit A: Scope of Service and Compensation

Exhibit B: Fee Proposal and Schedule of Reimbursable Expenses

Exhibit C: Not Used

Exhibit D: Certificate of Insurance

Exhibit E: Affirmative Action Certificate (only used for contracts over \$100,000.00)

Exhibit F: Location of Service (N/A for contracts under \$5,000.00)

Exhibit G: Not Used

Exhibit H: Not Used

Exhibit I: Affidavit of Non-collusion

Exhibit J: Immigration Status Certification

Exhibit K: Consultant Performance Evaluation Form (Incorporated by reference. A copy is available at Web site: www.admin.state.mn.us/recs)

Exhibit L: Project Energy/Utility Savings Form (Incorporated by reference. A copy is available at Web site: www.admin.state.mn.us/recs)

Exhibit M: Not Used

IN WITNESS WHEREOF STATE has caused this Agreement to be duly executed in its behalf and 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.

MAPS Order Number or CFMS Contract Number:
Certification Signature:
Date:

2. CONSULTANT: "Consultant Company Name"

CONSULTANT certifies that the appropriate person(s) have executed the Agreement on behalf of the CONSULTANT as required by applicable articles, by-laws, resolutions, or ordinances.

By: _____ (Corporate Signature)
Printed Name:
Title:
Date:

By: _____ (Corporate Signature)
Printed Name:
Title:
Date:

3. STATE AGENCY: Department of Administration
Contract approval and certification that state funds have been encumbered as required by Minnesota Statutes §§ 16A.15 and 16C.05.

By: _____ (Authorized Signature)
Printed Name: Gordon Christofferson
Title: Assistant Director
Date:

4. COMMISSIONER OF ADMINISTRATION, as delegated to Materials Management Division:

By: (Authorized Signature)
Date:

Exhibit B.1 Consultant Compensation
Exhibit B.2 Consultant Reimbursed Expenses
Schedule of Reimbursable Expenses
For Professional and Technical Services Contract

Consultant shall be reimbursed for the following expenses incurred by Consultant in connection with the services provided under this Contract. The reimbursement amount will be a negotiated amount agreed upon by the Consultant and State.

Consultant shall provide complete documentation, including copies of all invoices paid by Consultant, for those expenses which are to be reimbursed.

1. CONSULTANT shall be reimbursed at cost for printing of Predesign Documents, Schematic Design Documents, Design Development Documents, Construction Documents, and Bidding Documents. STATE shall determine quantities to be printed.

If CONSULTANT does its own printing, reimbursement shall be at the following rates:

PLANS: Blue Line or Black Line Prints at \$.10 per square foot
30" x 42" sheet = \$0.88
24" x 36" sheet = \$0.60

PREDESIGN, REPORTS, AND CONSTRUCTION SPECIFICATIONS: Multilith or Instant Print \$0.05 per sheet (each face). Specifications shall be duplicated utilizing both sides of each sheet.

2. Consultant shall be reimbursed at cost for U.S. Mail or Express postage fees to convey Predesign, Schematic Design, Design Development, Construction, and Bidding Documents to the State, to the State review consultants, to State and local officials and to contractors.
3. Consultant shall be reimbursed at cost for long-distance telephone calls and for long-distance fax transmissions pertaining to the Project.
4. Consultant shall be reimbursed at cost for one advertisement for bid. This reimbursement shall be requested on the same document as reimbursement for the printing of Bidding Documents when requested by the State.
5. Consultant shall be reimbursed printing cost for plans on one mylar set provided to document as-built conditions.
6. Consultant shall be reimbursed at cost for the plan review fee.

Exhibit D
PROFESSIONAL/TECHNICAL CONTRACTS
GENERAL INSURANCE REQUIREMENTS

Insurance Requirements

A. 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. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** amounts are as follows:

\$100,000 – Bodily Injury by Disease per employee
\$500,000 – Bodily Injury by Disease aggregate
\$100,000 – Bodily Injury by Accident

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

2. **Commercial General Liability:** 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 by the Contractor under the contract. Insurance **minimum** amounts are as follows:

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

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
Other; please list _____
State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability:** 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 provide Commercial Automobile Liability. Insurance **minimum** amounts 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
State of Minnesota named as an Additional Insured

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

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 or other approved documentation 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.

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 Contractor's professional services required under the contract, and include an extended reporting period provision of a minimum of (3) years following completion of the work.

C. Additional Insurance Conditions:

- 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 Contractor's performance under this contract;
- Contractor's policy(ies) will provide the State of Minnesota with thirty (30) days advance notice of cancellation, nonrenewal, or reduction in limits of coverage or other material change;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Include legal defense fees in addition to its liability policy limits, with the exception of B.4 above; and
- Obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.

D. The State reserves 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 the State's authorized representative upon written request.

E. The successful responder is required to submit acceptable evidence of insurance coverage requirements prior to commencing work under the contract.

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification**

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to **BOX B**.
 Your response will be rejected unless your business:
 has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)
 –or–
 has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). [If the date is the same as the response due date, indicate the time your plan was received: _____ (time). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

Please note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A
 Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

BOX C – For all companies
 By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: _____ Date _____
 Authorized Signature: _____ Telephone number: _____
 Printed Name: _____ Title: _____

For assistance with this form, contact:
 Minnesota Department of Human Rights, Compliance Services Section
 Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101 TC Metro: (651) 296-5663 Toll Free: 800-657-3704
 Web: www.humanrights.state.mn.us Fax: (651) 296-9042 TTY: (651) 296-1283
 Email: employerinfo@therightsplace.net

LOCATION OF SERVICE DISCLOSURE

Check all that apply:

- The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of Minnesota.
- The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.
- The services to be performed under the anticipated contract as specified in our proposal will be performed in part within Minnesota and in part within another state within the United States.
- The services to be performed under the anticipated contract as specified in our proposal DO involve work outside the United States. Below (or attached) is a description of

(1) the identity of the company (identify if subcontractor) performing services outside the United States;

(2) the location where services under the contract will be performed; _____

(3) the percentage of work (in dollars) as compared to the whole that will be conducted in each identified foreign location. _____

Attachment enclosed at (state where): _____

CERTIFICATION

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

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

**STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION**

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

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

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public

My commission expires: _____

(Rev. 12/00)

State of Minnesota — Immigration Status Certification

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

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

If any response to a solicitation is or could be in excess of \$50,000, vendors and subcontractors must certify compliance with items 1 and 2 below. In addition, prior to the delivery of the product or initiation of services, vendors **MUST** obtain this certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file with the contract vendor and made available to the state upon request.

1. The company shown below is in compliance with the Immigration Reform and Control Act of 1986 in relation to all employees performing work in the United States and does not knowingly employ persons in violation of the United States immigration laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract and maintain subcontractor certifications for inspection by the state if such inspection is requested; and

2. By the date of the delivery of the product and/or performance of services, the company shown below will have implemented or will be in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

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

Name of Company: _____ Date: _____
Authorized Signature: _____ Telephone Number: _____
Printed Name: _____ Title: _____

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

For assistance with the *E-Verify* Program

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

For assistance with this form, contact:

Mail: 112 Administration Bldg, 50 Sherburne Ave. St. Paul, MN 55155

E-mail: MMDHelp.Line@state.mn.us Telephone: 651.296.2600

Persons with a hearing or speech disability may contact us by dialing 711 or 1.800.627.3529



**Department of Administration
Real Estate and Construction Services**

EXHIBIT K

CONSULTANT PERFORMANCE EVALUATION

EVALUATION (Check one) Intermediate Final

NAME AND ADDRESS OF CONSULTANT		PROJECT NO. Project TITLE AND LOCATION					
		DESCRIPTION OF PROJECT					
CONTRACT DATA							
1. WORK SCOPE (Predesign, Study, Design, etc.)	2a. ORIGINAL FEE \$	2b. CONTRACT CHANGES <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;"># OF CHANGES</td> <td style="width:50%;">CHANGES</td> </tr> <tr> <td> </td> <td>\$</td> </tr> </table>	# OF CHANGES	CHANGES		\$	2c. FINAL FEE AMT \$
# OF CHANGES	CHANGES						
	\$						
3a. CONTRACT AWARD DATE	3b. ORIGINAL COMPLETION DATE	3c. ACTUAL COMPLETION DATE					
CONSTRUCTION COST DATA							
\$4a. CONSTRUCTION (CD) ESTIMATE \$	4b. CONSTRUCTION AWARD AMOUNT \$	4c. CONSTRUCTION CHANGES AMOUNT \$	5d. TOTAL CONST'N AMOUNT \$				

EVALUATION OF SERVICES – See attached Rating Guide			
SCOPE/Work	EVALUATION RATING: Rate all items below. E = Excellent; S = Satisfactory; U = Unsatisfactory; N/A = Not Applicable. See attached Rating Guide		<u>RATI</u> <u>NG</u>
Predesign Or Study	1.	Predesign addressed the project requirements	
	2.	Quality and completeness of documents	
	3.	Adherence to schedule	
	4.	Sufficient cost planning and estimating	
	5.	Is the user agency satisfied?	
	6.	When funding is available, can the State rely on the information for delivering the project?	
Design	7.	The Contract Documents met the specific requirements of the project scope	
	8.	The Contract Documents complied with the State's <i>Design Guidelines</i>	
	9.	Consultant maintained the design schedule	
	10.	Quality and completeness of design documents & coordination of all design disciplines	

EVALUATION OF SERVICES – See attached Rating Guide

<u>SCOPE/Work</u>	<u>EVALUATION RATING:</u> Rate all items below. E = Excellent; S = Satisfactory; U = Unsatisfactory; N/A = Not Applicable. See attached Rating Guide	<u>RATI</u> <u>NG</u>
	11. Design meeting minutes were accurate, timely and complete	
	12. Consultant response to user agency input and inquiries	
Bidding	13. The number of Addenda to the bidding documents, and changes within were at what level?	
	14. Consultant's construction cost estimate compared to the awarded construction cost	
Construction	15. Consultant utilized the personnel and consultants as submitted for support during the Construction Phase?	
	16. Site observation with timely and accurate observation reports	
	17. Shop drawings, RFI's, PR's and CO's prepared, responded to, researched, evaluated and promptly processed?	
	18. Response time on issues during construction	
	19. Response time in reviewing and certifying Contractor's pay requests	
	20. Level of errors and omissions in the Contract Documents	
	21. Overall coordination, cooperation and communication during the Construction Phase?	
	22. Consultant's knowledge and actions for responding to claims, issuing notices in accordance with the General Conditions of the Contract.	
	23. Level of command the consultant exhibited in interpreting the contract documents in responding	
Post Construction & Close out	24. Timely submittal of close-out and Record Documents in an accurate	
	25. Timely response to and resolution of punchlist and closeout items	
	26. Timely response to, and resolution of, final warranty and claims items	

NON-DESIGN RELATED WORK: (for contracts not involving design work):

Additional Comments / Notes to expand on Ratings:
(Reference the item number above or add an additional number)

Project Manager or staff person responsible for contract		Assistant Director – Project Operations	
SIGNATURE	DATE	SIGNATURE	DATE

RATING GUIDE

Evaluation Ratings and Additional Comments:

Excellent – The Consultant performed in a better than average manner that demonstrating a good understanding of the owner’s requirements and contract requirements. The consultant’s overall performance outweighs any negative performance. The Consultant contributed a great deal to the success of the project.

Satisfactory – The Consultant performed in an average manner that demonstrated an acceptable understanding of the owner’s requirements and contract requirements. The consultant’s overall performance is equal to any negative performance. The Consultant has contributed to the success of the project.

Unsatisfactory – The Consultant performed in an unacceptable manner in regards to the owner’s requirements and contract requirements. The Consultant’s overall unsatisfactory performance outweighs any positive performance. The Consultant has made significant errors or omissions or has otherwise failed to contribute to the success of the project.

Not Applicable – This service or work was not required of the Consultant.

Additional Comments – This portion of the form should be used to further support the ratings. The RECS Project Manager shall include any factual information supported by documents or other evidence. Other supportive materials to substantiate the evaluation may be attached or referenced as additional documentation.

Architectural/Engineering Professional/Technical Master Roster Contract Certification Form

Project Title "description and location of the project"	Project Manager & Phone: "Project Manager" "PM 10 digit phone"	Project Number "SAONumber"
Department <p style="text-align: center;">Administration</p>	Division Real Estate and Construction Services	Control Log No.
Estimated Contract Value (include state and non-state funds): "Total Contract Amount"	Source of Funds	
Contract period: from: to: with option to extend add'l one year periods.		

<p>Nature of Contract:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Architectural Services <input type="checkbox"/> Engineering Services <input type="checkbox"/> Owner's Rep. <input type="checkbox"/> Study <input type="checkbox"/> Other <p>Product or Result:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Predesign <input type="checkbox"/> Design <input type="checkbox"/> Bidding <input type="checkbox"/> Construction Administration <input type="checkbox"/> Post Construction <input type="checkbox"/> Warranty <input type="checkbox"/> Testing/Inspection/Study <input type="checkbox"/> Other: 	<p>If longer than a 2 year contract, give reason:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Length of construction project <input type="checkbox"/> Length of time required to complete consultant work <ul style="list-style-type: none"> <input type="checkbox"/> Design related work <input type="checkbox"/> Post Construction <input type="checkbox"/> Warranty <input type="checkbox"/> Testing/Inspection Other (explain): <ul style="list-style-type: none"> <input type="checkbox"/> Funding <input type="checkbox"/> Phasing
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Project Description

1) **The Agency certifies that in accordance with Minn. Stat. §16C.08, subdivisions 2 and 3 it has the authority to enter into the following professional/technical service contract:**
RECS was asked by (*agency name*) to do the following project:
(Describe project)

Describe how the proposed contract is necessary and reasonable to advance the statutory mission of your agency: *The Commissioner of the Dept of Administration has delegated the Real Estate and Construction Services the authority to provide state agencies with services for design and construction. Minn. Stat. 16B.30.*

Notice & Selection Method:

2) a) **Master Roster Program:** The work for this project can be preformed by a pre-qualified firm on the list for the Master Roster Program (MMD Cert #8923). An RFP was sent to the following number of firms based upon the size of the anticipated contract:

- Minimum of 1 firm (contract under \$25,000)
- Minimum of 2 firms (contract between \$25,000 and \$50,000)
- Minimum of 3 firms (contract between 50,000 and \$100,000)
- Minimum of 10 firms (contract between \$100,000 - \$200,000)

b) **State Register:** The Notice of Request for Proposal will be published in the State Register for ____ weeks. The Request for Proposal will be available on the Real Estate and Construction Services website at:
www.admin.state.mn.us/recs.

c) **State Designer Selection Board:** The Notice of Request for Proposal will be published in the State Register for ____ weeks. The Request for Proposal will be available on the Real Estate and Construction Services website at:
www.admin.state.mn.us/recs.

Proposal Evaluation Process:

- 3) **Selection Basis for Projects:** *Where more than one firm was sent the RFP, the Consultant was selected based upon the RFP criteria. Where one firm is selected from the master roster because the contract amount will be less than \$25,000.00, that firm was selected based upon that firm's pre-qualifications which have indicated it is capable of providing the necessary services. [Include the criteria below or on attached RFP. Be sure price is a factor when it's not an SDSB project.]*

Performance Measures

- 4) Describe the performance measures or other tools that will be used to monitor and evaluate contract performance and how the results of the work will be used: **[Add details of how milestones and progress are monitored.]** *RECS project managers set milestones and monitor the consultant's progress throughout the project for compliance with the articles of the contract and the services and deliverables required in the contract.*

Evaluation of Cost

- 5) Executive Order 05-07 requires that "all vendor selection evaluations conducted under Minnesota's "Best value" statutes must consider price to be of significant importance..." Price information must be electronically reported. The reporting page and instructions are found at: <http://www.mmd.admin.state.mn.us/PriceData/PriceDataSheet.aspx>

Weight of price ____ as a % of the total, and/or

Weight of price as a point value of ____ out of _____ total points.

- I am requesting an exception to the State's guideline. A memo justifying the request is attached.

Single Source Request

- 6) **Sole/Single Source Request:** (See: www.mmd.admin.state.mn.us)

- Identity of Consultant and justification memo is attached.
 Not Applicable

Joint Powers Agreements

- 7) **Joint Powers Agreement (Minn. Stat. \$471.59, subd 1)** An explanation is attached of how and why this governmental unit was selected and whether this work can be performed by any other governmental unit is attached.

- Attached explanation memo
 Not Applicable

Foreign Outsourcing

- 8) Pursuant to the Governor's Executive Order 04-02, and the resulting state policy, agencies must consider the extent to which P/T or standard service contracts involve foreign outsourcing when making contract award decisions. By submission of this Certification, the agency is attesting that it has considered whether:
- 1) foreign outsourcing is likely to occur given what is known about the industry;
 - 1) services required are also readily available from companies that perform the services within the United States;
 - 2) there are anticipated differences in price between off-shored services and those performed within the United States, based on market analysis, comparisons involving previous transactions or other reliable information;
 - 4) there are anticipated differences in quality or the time in which the contract can be performed between any off-shored and domestic services; and
 - 4) the potential for foreign outsourcing raises other relevant factors that require consideration such as effects on the local economy, workplace safety issues, or potential for compromised security of data, systems, or other resources.

After consideration of these factors **[check one]**

- The extent to which services will be performed within the United States will be a requirement of or a factor in the award as set forth in the attached solicitation document.
 After considering the above factors, we have opted not to make the location where services are performed a requirement of or a factor in the award of the contract.

Agency Certifications

9) Pursuant to Minn. Stat. 16C.08, I certify:

1. No state employee is (a) able and (b) available to perform the services called for by the contract

A. How did you reach this conclusion:

To the best of RECS's knowledge, only DNR, MnDOT, MnSCU and RECS have staff with the appropriate licensure. To the best of RECS's knowledge, none of these state agencies have staff available to perform the services.

B. List other methods considered for accomplishing the work. *[Example: In-house, other divisions or offices, other state agencies.]*

Architects, Engineers, Landscape Architects, Land Surveyors, and Geoscientists must be licensed by the State of Minnesota in order to perform services. No other method is available.

2. The normal competitive bidding mechanisms (low bid) will not provide for adequate performance of the service.

3. Reasonable efforts will be made to publicize the availability of the contract to the public.

4. The agency will develop and implement a written plan providing for the assignment of specific agency personnel to manage the contract, including a monitoring and liaison function, the periodic review of interim reports or other indications of past performance, and the ultimate utilization of the final product of the services. The project manager is indicated on page 1 of this form.

5. No one in or on behalf of the agency will authorize the contractor to begin work before the contract is fully executed unless an exception has been granted by the Commissioner of Administration under Minn. Stat. §16C.05, subd. 2a and funds are fully encumbered.

6. The contract will not establish an employer-employee relationship between the state or the agency and any person performing under the contract.

7. In the event the results of the contract work will be carried out or continued by state employees upon completion of the contract, the agency will require the contractor to include state employees in development and training, to the extent necessary to ensure that after completion of the contract, state employees can perform any ongoing work related to the same function.

8. No current state employee will engage in the performance of the contract.

9. Reasonable efforts will be made to avoid conflicts of interest throughout the selection and performance of this contract. All potential or actual conflicts of interest will be reported to MMD.

10. The agency will not contract out its previously eliminated jobs for four years without first considering the same former employees who are on the seniority unit layoff list who meet the minimum qualifications determined by the agency. The seniority unit layoff list was reviewed on _____ (date).

The following three Internal Approval signatures are for agency use; they are not required by MMD.

Project Manager:	Date:
Division Director:	Date:
Assistant Commissioner (program):	Date:

Agency signature (required)

Authorized Certification/Officer authorized to sign contracts:	Date:
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Minnesota Office of Enterprise Technology review signature is required for certifications involving information and communications technology.

Minnesota Office of Technology Reviewed (when applicable)	Date:
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Department of Administration signature (required)

Materials Management Division/Professional Technical Approval:	Date:
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