

SAMPLE

P.O. Number _____

[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN ITALICS AND BRACKETS. PLEASE COMPLETE EVERY FIELD AND DELETE ALL INSTRUCTIONS INCLUDING THE BRACKETS BEFORE OBTAINING SIGNATURES.]

**STATE OF MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES
*[INSERT NAME OF COLLEGE/UNIVERSITY/OFFICE OF THE CHANCELLOR]***

**MAINTENANCE/SERVICE MASTER CONTRACT
[NOT BUILDING CONSTRUCTION OR REMODELING]**

THIS CONTRACT, and amendments and supplements thereto, is between the State of Minnesota, acting through its **Board of Trustees of the Minnesota State Colleges and Universities**, on behalf of *[INSERT NAME OF COLLEGE/UNIVERSITY/OFFICE OF THE CHANCELLOR]* (hereinafter "MnSCU"), and *[INSERT CONTRACTOR'S LEGAL NAME AND FULL ADDRESS]*, an independent contractor, not an employee of the State of Minnesota (hereinafter "CONTRACTOR").

WHEREAS, MnSCU, pursuant to Minnesota Statutes Chapter 136F, is empowered to procure from time to time certain services; and

WHEREAS, MnSCU is in need of maintenance or services that are not related to building or facilities construction or remodeling; and

WHEREAS, the CONTRACTOR represents it is duly qualified and willing to perform the services set forth in this contract;

NOW, THEREFORE, it is agreed:

I. **TERM OF CONTRACT.** This contract shall be effective on *[INSERT FULL DATE (e.g., January 29, 2005)]* or upon the date the final required signature is obtained by MnSCU, whichever occurs later, and shall remain in effect until *[INSERT FULL DATE (e.g., June 30, 2005)]* or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. **The CONTRACTOR understands that no work should begin under this contract until all required signatures have been obtained and the CONTRACTOR is notified by MnSCU's authorized representative that it may begin work.** The term of any work authorization issued under this Maintenance/Service Master Contract may not extend beyond the expiration of this Master Contract.

II. **CONTRACTOR'S DUTIES AND SCOPE OF WORK.**

A. The CONTRACTOR may be requested by MnSCU to perform any of the following services under individual work authorizations:

[INSERT SUFFICIENT DETAIL SO THAT CONTRACTOR CAN BE HELD ACCOUNTABLE FOR THIS WORK. ATTACH ADDITIONAL PAGE(S) IF NECESSARY AND LABEL THE ATTACHMENT.]

A complete detailed description of required work will be furnished in each work authorization issued.

- B. CONTRACTOR understands that only upon receipt of a work authorization shall CONTRACTOR begin work under this Master Contract. Any and all effort, expenses, or actions taken before the work authorization is issued is not authorized under Minnesota Statutes and is undertaken at the sole responsibility and expense of CONTRACTOR.
- C. CONTRACTOR shall comply with all time requirements described in a work authorization. In the performance of work pursuant to this Contract, time is of the essence.
- D. CONTRACTOR understands that this Master Contract is not a guarantee of a work authorization. MnSCU has determined that it might have need for the services under this Master Contract, but MnSCU does not commit to issuing a work authorization or spending any money with CONTRACTOR.

III. **CONSIDERATION AND TERMS OF PAYMENT.**

A. Consideration for all services performed and goods or materials supplied by the CONTRACTOR for all work authorizations issued pursuant to this Master Contract shall be paid by MnSCU as follows:

- 1. Compensation of *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS PER HOUR FOR EACH SERVICE IDENTIFIED, e.g. Fifty and 00/100 Dollars (\$50.00) per hour for XYZ task]*
- 2. The **total obligation** of MnSCU for all compensation and reimbursement to the CONTRACTOR shall not exceed *[INSERT DOLLAR AMOUNT IN WORDS AND NUMBERS, e.g. Four Thousand One Hundred Twenty and 00/100 Dollars (\$4,120.00)].*
- 3. Check one box below as applicable.

Funds are encumbered on this contract and the encumbered amount is \$_____.

No funds are encumbered at this time and payment will be certified by purchase order. *[IF THIS BOX IS CHECKED, WRITE "NOT APPLICABLE" IN THE ENCUMBRANCE SIGNATURE BLOCK.]*

B. Terms of Payment.

- 1. Payment shall be made by MnSCU promptly after the CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by MnSCU's authorized representative. All services provided by the CONTRACTOR under work authorizations issued pursuant to this Master Contract shall be performed to the satisfaction of MnSCU, as determined at the sole discretion of its authorized representative, and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations. The CONTRACTOR shall not receive payment for work found by MnSCU to be unsatisfactory or performed in violation of any applicable federal, state or local law, ordinance, rule or regulation. Invoices shall be presented by CONTRACTOR according to the following schedule:
 - a. *[USE TERMS OR PHRASES SUCH AS WEEKLY, MONTHLY OR WITHIN CALENDAR DAYS FOLLOWING COMPLETION OF SERVICES OR IF THERE ARE SPECIFIC DELIVERABLES, PHASES, TASKS, LIST HOW MUCH WILL BE PAID FOR EACH.]*
 - b. Retainage. No more than ninety percent (90%) of the amount due will be paid by MnSCU until all the services under this Contract or applicable work authorization

have been reviewed by MnSCU's authorized representative. The balance due will be paid when MnSCU's authorized representative determines that CONTRACTOR has satisfactorily fulfilled all the terms of the Contract or applicable work authorization.

2. Nonresident Aliens. Pursuant to 26 U.S.C. § 1441, MnSCU is required to withhold certain federal income taxes on the gross compensation paid to nonresident aliens, as defined by Internal Revenue Code § 7701(b). MnSCU will withhold all required taxes unless and until CONTRACTOR submits documentation required by the Internal Revenue Service indicating that CONTRACTOR is a resident of a country with tax treaty benefits. MnSCU makes no representations regarding whether or to what extent tax treaty benefits are available to CONTRACTOR. To the extent that MnSCU does not withhold these taxes for any reason, CONTRACTOR agrees to indemnify and hold MnSCU harmless for any taxes owed and any interest or penalties assessed.

IV. **AUTHORIZED REPRESENTATIVES.** All official notifications, including but not limited to work authorizations, purchase orders, or cancellation of this Master Contract must be sent to the other party's authorized representative.

- A. MnSCU's authorized representative for the purpose of administration of this Master Contract is:

Name:
Address:
Telephone:
E-Mail:
Fax:

Such representative shall have final authority for acceptance of the CONTRACTOR'S services and, if such services are accepted as satisfactory, shall so certify on each invoice presented pursuant to Clause III, paragraph B.

- B. The CONTRACTOR'S authorized representative for the purpose of administration of this Master Contract is:

Name:
Address:
Telephone:
E-Mail:
Fax:

V. **CANCELLATION AND TERMINATION.**

- A. This Master Contract may be canceled by MnSCU at any time, with or without cause, upon thirty (30) days written notice to the CONTRACTOR. In the event of such a cancellation, the CONTRACTOR shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
- B. Termination for Insufficient Funding. MnSCU may immediately terminate this Master 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 in this Master Contract. Termination must be by written or fax notice to the CONTRACTOR within a reasonable time of MnSCU receiving notice that sufficient funding is not available. MnSCU is not obligated to pay for any services that are provided after notice and effective date of termination. However, the CONTRACTOR will be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed to the extent that funds are available. MnSCU will not be assessed any penalty if the Master Contract is

terminated because of the decision of the Minnesota Legislature or other funding source not to appropriate funds.

- VI. **ASSIGNMENT**. The CONTRACTOR shall neither assign or transfer any rights or obligations under this Master Contract without the prior written consent of MnSCU.
- VII. **LIABILITY**. The CONTRACTOR shall indemnify, save, and hold MnSCU, its representatives and employees harmless from any and all claims or causes of action, including all attorney's fees incurred by MnSCU, arising from the performance of this Master Contract, by the CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies the CONTRACTOR may have for MnSCU's failure to fulfill its obligations pursuant to this Master Contract.
- VIII. **WORKERS' COMPENSATION**. The CONTRACTOR certifies it is in compliance with Minnesota Statutes § 176.181, subd. 2 pertaining to workers' compensation insurance coverage. The CONTRACTOR'S employees and agents will not be considered MnSCU 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 MnSCU's obligation or responsibility.
- IX. **MINNESOTA STATUTE §181.59**.

The Contractor will comply with the provisions of Minnesota Statute §181.59 which require:

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 or 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.

X. **DATA DISCLOSURE**.

- A. The CONTRACTOR is required by Minnesota Statutes § 270C.65 to provide either a social security number or a federal employer tax identification number and Minnesota tax identification number. This information may be used in the enforcement of federal and state tax laws. Supplying these numbers could result in action to require CONTRACTOR to file state tax returns and pay delinquent state tax liabilities. This contract 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 approving the contract and the payment of state obligations.
- B. For any person hired as an independent contractor, except for those persons whose contract is for less than two (2) months with gross earnings of less than Two Hundred Fifty and 00/100 Dollars (\$250.00) per month and for corporations, Minnesota Statutes § 256.998 requires that his or her social security number and date of birth be submitted to the Department of Human

Services. This information may be used in the enforcement of state and federal child support laws.

- XI. **GOVERNMENT DATA PRACTICES ACT.** The CONTRACTOR and MnSCU must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MnSCU in accordance with this Master Contract and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the CONTRACTOR in accordance with this Master Contract. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either the CONTRACTOR or MnSCU.

In the event the CONTRACTOR receives a request to release the data referred to in this clause, the CONTRACTOR must immediately notify MnSCU. MnSCU will give the CONTRACTOR instructions concerning the release of the data to the requesting party before the data is released.

- XII. **INTELLECTUAL PROPERTY.** The CONTRACTOR represents and warrants that any materials, plans, specifications, documents, software or intellectual property of any kind produced or used under this contract ("MATERIALS") do not and will not infringe upon any intellectual property rights of another, including, but not limited to, patents, copyrights, trade secrets, trade names, and service marks and names. The CONTRACTOR shall indemnify and defend, to the extent permitted by the Attorney General, MnSCU at the CONTRACTOR'S expense from any action or claim brought against MnSCU to the extent that it is based on a claim that all or part of the MATERIALS infringe upon the intellectual property rights of another. The CONTRACTOR shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including, but not limited to, reasonable attorney fees arising out of this contract, amendments and supplements thereto, which are attributable to such claims or actions.

If such a claim or action arises, or in the CONTRACTOR'S or MnSCU's opinion is likely to arise, the CONTRACTOR shall, at MnSCU's discretion, either procure for MnSCU the right or license to continue using the MATERIALS at issue or replace or modify the allegedly infringing MATERIALS. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

- XIII. **ANTITRUST.** The CONTRACTOR hereby assigns to the State of Minnesota any and all claims for overcharges as to goods or services provided in connection with this Master Contract resulting from antitrust violations which arise under the antitrust laws of the United States or the antitrust laws of the State of Minnesota.

- XIV. **JURISDICTION AND VENUE.** This Master Contract, and amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this Master Contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

- XV. **AMENDMENTS.** Any amendments to this Master Contract shall be in writing and shall be executed by the same parties who executed the original contract, or their successors in office.

- XVI. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the CONTRACTOR relevant to this Master Contract shall be subject to examination by MnSCU and the Legislative Auditor for a minimum of six (6) years from the end of the contract.

- XVII. **SURVIVAL OF TERMS.** The following clauses survive the expiration, cancellation or termination of this contract: VII., Liability; X., Data Disclosure; XI., Government Data Practices Act; XII., Intellectual Property; XIV., Jurisdiction and Venue; and XVI., State Audits.

- XVIII. **INSURANCE.** CONTRACTOR shall submit an ACCORD Certificate of Insurance to MnSCU's authorized representative prior to execution of the Master Contract. Each policy must contain a

thirty (30) day notice of cancellation, non-renewal or material change to all named and additional insureds. The insurance policies will be issued by a company or companies having an "A.M. Best Company" financial strength rating of A- (Excellent) or better prior to execution of the contract. CONTRACTOR shall maintain and furnish satisfactory evidence of the following:

A. Workers' Compensation Insurance. CONTRACTOR shall provide workers' compensation insurance for all its employees and, in case any work is subcontracted, CONTRACTOR shall 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, at limits not less than \$100,000.00 bodily injury by disease per employee, \$500,000.00 bodily injury by disease aggregate, and \$100,000.00 bodily injury by accident.

B. Commercial General Liability. CONTRACTOR shall maintain a comprehensive commercial general liability insurance (CGL) policy protecting it from bodily injury claims and property damage claims which may arise from operations under the contract whether the operations are by CONTRACTOR or by a subcontractor or by anyone directly or indirectly employed under the contract. The minimum insurance amounts will be:

\$1,000,000.00 per occurrence
\$2,000,000.00 annual aggregate

In addition, the following coverages shall be included:

Products and Completed Operations Liability
Blanket Contractual Liability
Name the following as Additional Insureds:

Board of Trustees of the Minnesota State Colleges and Universities
[INSERT NAME OF COLLEGE/UNIVERSITY/OFFICE OF THE CHANCELLOR]

C. Commercial Automobile Liability. CONTRACTOR shall maintain insurance protecting it from bodily injury claims and property damage claims which may arise from operations of vehicles under the contract whether such operations were by CONTRACTOR, a subcontractor or by anyone directly or indirectly employed under the contract. The minimum insurance amounts will be:

\$1,000,000.00 per occurrence Combined Single Limit (CSL)

In addition, the following coverages shall be included:

Owned, Hired, and Non-owned
Name the following as Additional Insureds:

Board of Trustees of the Minnesota State Colleges and Universities
[INSERT NAME OF COLLEGE/UNIVERSITY/OFFICE OF THE CHANCELLOR]

D. MnSCU reserves the right to immediately terminate this Master Contract if CONTRACTOR is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against CONTRACTOR. All insurance policies must be available for inspection by MnSCU and copies of policies must be submitted to MnSCU's authorized representative upon written request.

XIX. **AFFIRMATIVE ACTION REQUIREMENTS FOR CONTRACTS IN EXCESS OF \$100,000.00 AND THE CONTRACTOR HAS MORE THAN 40 FULL-TIME EMPLOYEES IN MINNESOTA OR ITS PRINCIPAL PLACE OF BUSINESS.**

[DELETE CLAUSE XIX IF THE TOTAL CONTRACT VALUE IS UNDER \$100,000.00 AND RENUMBER REMAINING CLAUSE IF APPLICABLE.]

MnSCU intends to carry out its responsibility for requiring affirmative action by its CONTRACTORS.

- A. Covered Contracts and Contractors. If the contract exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00) and the CONTRACTOR employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principle place of business, then the CONTRACTOR must comply with the requirements of Minnesota Statute §363A.36 and Minnesota R. Parts 5000.3400-5000.3600. A CONTRACTOR covered by Minnesota Statute §363A.36 because it employed more than forty (40) full-time employees in another state and the CONTRACTOR does not have a Certificate of Compliance, said CONTRACTOR must certify that it is in compliance with federal affirmative action requirements.
- B. Minnesota Statute §363A.36. Minnesota Statute §363A.36 requires CONTRACTOR 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 (hereinafter 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.
- C. Minnesota R. 5000.3400-5000.3600.
 1. General. Minnesota R. 5000.3400-5000.3600 implement Minnesota Statute §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 contractor'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 Minnesota R. 5000.3400-5000.3600, including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 2. Disabled Workers. The CONTRACTOR must comply with the following affirmative action requirements for disabled workers.
 - (a) The CONTRACTOR must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (b) The CONTRACTOR agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (c) In the event of the CONTRACTOR'S noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statute §363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

- (d) The CONTRACTOR 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 CONTRACTOR'S obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (e) The CONTRACTOR must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Minnesota Statute §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.
3. Consequences. The consequences for the CONTRACTOR'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 MnSCU.
4. Certification. The CONTRACTOR hereby certifies it is in compliance with the requirements of Minnesota Statutes § 363A.36 and Minnesota R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

XX. **OTHER PROVISIONS.**

[DELETE CLAUSE XX IF THERE ARE NO ADDITIONAL PROVISIONS TO THE CONTRACT.]

[ATTACH ADDITIONAL PAGE(S) IF NECESSARY.]

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. CONTRACTOR:

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

By (authorized signature and printed name)
Title
Date

By (authorized signature and printed name)
Title
Date

2. VERIFIED AS TO ENCUMBRANCE:

Employee certifies that funds have been encumbered as required by Minnesota Statute §16A.15.

By (authorized signature and printed name)
Title
Date

**3. MINNESOTA STATE COLLEGES AND UNIVERSITIES
[INSERT NAME OF COLLEGE/UNIVERSITY/OFFICE OF THE CHANCELLOR]:**

By (authorized signature and printed name)
Title
Date

4. AS TO FORM AND EXECUTION:

By (authorized signature and printed name)
Title
Date