

11-0375R

RESOLUTION AUTHORIZING AGREEMENT WITH THE REGENTS OF THE UNIVERSITY OF MINNESOTA ACCEPTING A GRANT IN THE AMOUNT OF \$10,000 FOR THE DESIGN AND STUDY OF SUSTAINABLE PAVEMENT USING THIN BONDED OVERLAY CONSTRUCTED WITH TACONITE AND SHINGLES.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. _____, with the Regents of the University of Minnesota, accepting grant funds in the amount of \$10,000 from the University's Minnesota Local Road Research Board to fund local Operational Research Assistance Program (OPERA) Project No. 2010-12: Sustainable Pavement Rehabilitation using Thin Bonded Overlay Constructed with High Taconite and Recycled Asphalt Shingle Mix to develop specifications for the described mix and to study its effectiveness in comparison to typical asphalt mix, said funds to be deposited in Fund 411 (Permanent Improvement), Agency 035 (Capital Projects Accounts), Revenue Source 4220, city project no. PIMISCXX-0997TR for the purpose of completing a pavement design, study and final report.

Approved:



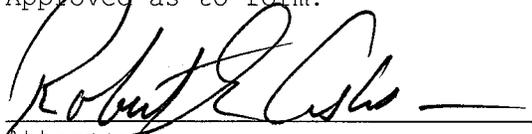
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

ENG CJV:jh 6/30/2011

STATEMENT OF PURPOSE: This resolution authorizes the acceptance of a grant from the U. of M.'s OPERA program and authorizes the city to enter into an agreement

to study the feasibility of using taconite and asphalt shingles in the bituminous to be placed as a thin overlay. These types of grants are available annually to municipalities to help fund transportation-related research projects, the results of which are published and distributed to all cities and counties in Minnesota. With the newly developed civil engineering program at UMD the city of Duluth has been asked to be the sponsor for this grant. A separate contract for consultant services in the same amount will be executed between the University of Minnesota - Duluth and the city.

The exact location of the placement of the pavement based on experimental mix design has not been finalized, but the city is considering the placement of the material on a local street designated for improvement in 2011. In any case, acceptance of this grant does not bind the city to go forward with pavement placement. If the city does proceed with placement, the bid would have to be approved by the city council in August.

The agreement will run to November 30, 2011. There is no matching requirement related to this grant.

UNIVERSITY OF MINNESOTA

Twin Cities Campus

Center for Transportation Studies

*200 Transportation and Safety Building
511 Washington Avenue S.E.
Minneapolis, MN 55455-0375
Ph: 612-626-1077 Fax: 612-625-6381
E-mail: cts@tc.umn.edu
<http://www.cts.umn.edu>*

April 4, 2011

To: Cindy Voight, City of Duluth, City Engineer, Principal Investigator
Eshan Dave and Dan Wegman, Proposal Sponsor/Project Champion

From: Mindy Carlson
OPERA Program Coordinator
Center for Transportation Studies
University of Minnesota

RE: **Minnesota Local Road Research Board
Operational Research for Local Transportation Groups**

Project No. 2010-12: Sustainable Pavement Rehabilitation using Thin Bonded Overlay constructed with High Taconite and Recycled Asphalt Shingle Mix

Approved: **\$10,000.00**

This proposal has been approved for the funding amount listed above. A contract will be initiated by our contract coordinator Penny Harris. Once the contract process is complete, you are immediately eligible to receive 80% of the funds. To receive the funds, I will need an invoice from your agency to the University of Minnesota requesting the 80%.

The final report for your project is due at the end of November 2011. At that time, a final report on the project and an invoice for the remaining 20% of the funds must be submitted to close the contract. Please submit your invoice for the remaining funds a couple of weeks prior to the end of the month to ensure all paperwork is completed by November 30, 2011.

The Center for Transportation Studies' Contract Coordinator Penny Harris, harri163@umn.edu, will contact you with next steps to receive funding.

The following is information needed and steps to be completed for the funding to be processed:

- 1) Email from the Center for Transportation Studies' Contract Coordinator, Penny Harris harri163@umn.edu will go out to your financial administrator as noted on the proposal.
- 2) Documents, vendor information, etc. requested by Penny returned to her via email.
- 3) The agency is immediately eligible for 80% reimbursement when the Center for Transportation Studies issues a purchase order/contract and an invoice for the initial 80% has been generated by your agency and received by the University of Minnesota.

- 4) Program Coordinator Mindy Carlson must receive the final report and an invoice to the University of Minnesota for the final 20% reimbursement by November 30, 2011. Instructions for the final report include:
 - a) A final field test report. A template will be provided. Please note the final report will be included on our MN LTAP website, paper copy one-pagers, electronic announcements and an Annual OPERA Report or publication made available to the public for use. You may also be called upon to present at a Fall or Spring Maintenance Expo or other CTS sponsored event.
 - c) At least 4 Picture(s), PowerPoint slides or video of the project.
- 5) If there are updates or any questions, please contact me at 612.625.1813 or carlson@umn.edu.

Thank you for your proposal. I hope that we will continue to see new proposals from you in the future.

cc:

Penny Harris, Center for Transportation Studies
Jim Grothaus, Center for Transportation Studies

UNIVERSITY OF MINNESOTA

QUICK - Contract for Professional Services - Q C P S

This agreement is entered into by and between the Regents of the University of Minnesota, a Minnesota constitutional corporation, through its unit identified in the "Contract Administrator" box below (the "University"), and contractor listed below.

Page 1

QCPS # 0000424400

(Include all digits on submitted invoice.)

| | | |
|---|---|---|
| Contractor #: 0000011708 CITY OF DULUTH PUBLIC WORKS & UTILITIES DEPT PO BOX 169001 DULUTH, MN 55816-9001 | Date 05/25/2011 | Dispatch: Print Tax Exempt # 8029894 |
| | Payment Terms Net 30 | Vendor Type Other (Govt, NonProfit, etc) |
| | Requestor Thanh Ho (E) hoxxx013@umn.edu | Phone 612/624-4434 |

ALSO SEE ATTACHMENTS

| | |
|---|---|
| Bill To: AP VOUCHER ENTRY MORRILL HALL SR VP FOR ACAD AFFAIRS/234 MOR 100 CHURCH ST SE MINNEAPOLIS, MN 55455 | Contract Administrator: Harris, Penny Anne Transportation Studies, Ctr 511 Washington Ave. SE 200 TSB Minneapolis, MN 55455 (E) harri163@umn.edu |
|---|---|

Federal Contract Funding? NO

Exclusive Terms and Conditions: These terms and conditions are the sole and exclusive terms and conditions applicable to this Contract. The University objects to, and rejects, all other terms and conditions contained in any document provided by Vendor at any time. All terms and conditions in the University of Minnesota Contract for Professional Services ("QCPS"), available from the University of Minnesota Purchasing department (purchase@umn.edu), 1300 S. 2nd St. Minneapolis, MN 55454 and available online at <http://www.ogc1.umn.edu/stellent/groups/ogc/documents/contract/OGC-SC501P.doc> are incorporated herein. Any performance under this Contract will be deemed acceptance of these terms and conditions and provisions and specifications on the face and Exhibit A of this Contract and attachments, if any.

Vendor agrees that any additional or different terms and conditions on its documents (acknowledgements, invoices, website, etc.) shall not be binding on the University, notwithstanding any legend on such document.

If "Yes" appears after "Federal Contract Funding?" at upper right, then Acquisition Regulations ("FAR") clauses apply. See <http://purchasing.umn.edu/docs/FederalFlowdown.pdf>

If attachments are enclosed, they are incorporated into the Contract by this reference.

Unauthorized

UNIVERSITY OF MINNESOTA

QUICK - Contract for Professional Services - Q C P S

Page 2

QCPS # 0000424400
(Include all digits on submitted invoice.)

EXHIBIT A

SCOPE OF WORK

Terms of Agreement: Start Date: 04/01/2011 and shall remain in effect until End Date: 09/30/2011

| Line | Item/Description | Quantity | UOM | Unit Price | Extended Amt |
|------|--|----------|-----|-------------|--------------|
| 1 | RESEARCH PROJ.: SUSTAINABLE PAVEMENT REHABILITATION USING THIN BONDED OVERLAY CONSTRUCTED WITH HIGH TACONITE AND RECYCLED ASPHALT SHINGLE MIX | 1.00 | LOT | \$10,000.00 | \$10,000.00 |

<< **Start Date:2011-04-01 SEE ATTACHED FOR DETAILS. >>

TOTAL OBLIGATION:

The University's total obligation to Contractor under this agreement including compensation for goods, services and reimbursable expenses shall not exceed **\$ 10,000.00** without the prior written approval of the University.

**ABOVE CONTRACT ELECTRONICALLY APPROVED BY UNIVERSITY OF MINNESOTA
DELEGATED AUTHORITY.**

Unauthorized

UNIVERSITY OF MINNESOTA

QUICK - Contract for Professional Services - Q C P S

Distribution Information: Req. ID. - 0000411747

| Line | Sched | Dist | Amount |
|------|-------|------|--------|
| 1 | 1 | 1 | \$0.00 |

| Fund | DeptID | Program | PC BU | Project | Act | Account | Fin EmplID | Chartfield 1 | Chartfield 2 | CS |
|------|--------|---------|-------|----------|-----|---------|------------|--------------|--------------|----|
| 3005 | 10181 | | UMSPR | 00018855 | 1 | 730207 | | | | |

| Line | Sched | Dist | Amount |
|------|-------|------|-------------|
| 1 | 1 | 2 | \$10,000.00 |

| Fund | DeptID | Program | PC BU | Project | Act | Account | Fin EmplID | Chartfield 1 | Chartfield 2 | CS |
|------|--------|---------|-------|----------|-----|---------|------------|--------------|--------------|----|
| 3005 | 10181 | | UMSPR | 00018855 | 1 | 730207 | | | | |



UNIVERSITY OF MINNESOTA

Terms and Conditions for Regents of the University of Minnesota Contract for Professional Services

1. **Term of Agreement.** This Agreement is effective on the date indicated on the cover sheet in which these terms and conditions are referenced ("Cover Sheet") and shall remain in effect until the date indicated on the Cover Sheet, or until all obligations set forth in this Agreement have been satisfactorily fulfilled, or the Agreement has been terminated, whichever occurs first. Contractor shall have a continuing obligation, after said Contract period, to comply with any provision of this Agreement intended for University's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement. CONTRACTOR UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY CONTRACTOR PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT CONTRACTOR'S OWN RISK AND AS A VOLUNTEER.

2. **Scope of Work.** Contractor shall perform all of the services set forth in the Cover Sheet and any exhibits attached thereto ("Scope of Work"). Contractor understands that time is of the essence in this Agreement and agrees to meet all milestones indicated on the Cover Sheet and any exhibits attached thereto.

3. **Consideration and Terms of Payment.** The consideration for all services (and goods if any) performed or supplied by Contractor under this Agreement shall be paid by University as follows:

3.1. **Total Obligation.** University's total obligation to Contractor under this Agreement, including compensation for goods, services, and reimbursable expenses, shall not exceed the amount indicated on the Cover Sheet without the prior written approval of University.

If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts. Requests for travel and subsistence expenses must be consistent with University's travel policy, a copy of which may be obtained from University's Purchasing Services, and clearly indicate prudent use of public funds.

3.2. **Frequency of Invoicing and Terms of Payment.** Contractor shall submit invoices upon completion of the milestones described in Exhibit A, or as may otherwise be provided in Exhibit A. University shall pay such invoices consistent with Section 4.8. (Terms of Payment).

4. **General Terms and Conditions.** The terms and conditions contained in this Agreement shall govern and shall take precedence over any different or additional terms and conditions which Contractor may have included in any documents attached to or accompanying this Agreement. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties. If this Agreement was made pursuant to a Request

for Proposal (RFP) or Request for Information (RFI), the following order of precedence shall apply: (1) this Agreement and its Exhibits, (2) University's RFP or RFI, and (3) Contractor's Response to University's RFP or RFI.

4.1. Choice of Law, Forum Selection, Entire Agreement, and Amendment. This Agreement shall be construed under Minnesota law (without regard for choice of law considerations) and the policies and procedures of University, as amended from time to time. Any action arising out of this Agreement shall be heard by a state court in Minnesota. For this purpose, Contractor specifically consents to jurisdiction in Minnesota. This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. University shall not be bound by any amendment to this Agreement unless such amendment has been signed by University's Director of Purchasing Services.

4.2. Warranty. Contractor expressly warrants and guarantees that the services performed under this Agreement will be of the highest professional standards and quality. Contractor further represents that all services and goods (if any) provided under this Agreement: (i) are free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of University as may be communicated to Contractor; (iv) comply with the highest warranties and representations expressed by Contractor orally or in any written advertisement, correspondence, response to University's RFP or RFI, or other document provided to or in the possession of University; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups); and (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Contractor agrees to correct all defects and nonconformities at Contractor's sole expense, to be liable for all direct damages suffered by University and any other persons, and to defend, indemnify, and hold harmless University and its regents, faculty members, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by University.

4.3. Inspections and Improper Delivery. University shall have a reasonable time (but not less than thirty [30] days) after receipt to inspect and test any goods or services provided under this Agreement and reject any or all items that are, in University's sole judgment, nonconforming or defective. Goods or services rejected or supplies in excess of quantities ordered may be returned to Contractor at Contractor's expense. University also reserves the right to refuse any goods or services and to cancel all or any part of this Agreement if Contractor fails to deliver all or any part of the goods or services in accordance with the terms and conditions of this Agreement. Failure by University to inspect and test the goods or services shall not relieve Contractor of such responsibility. Any acceptance by University shall not be deemed a waiver or settlement of any defect or nonconformity in such goods or services. If University elects to accept nonconforming or defective goods or services, University, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate University for the nonconformity or defect.

4.4. Assignment. Contractor may not assign any obligations of this Agreement without the prior written consent of University. In the event of any assignment, Contractor shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Contractor, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void. Notwithstanding any notice of assignment, University's tender of payment to Contractor named herein, or to any person reasonably believed by University to be entitled to payment, shall satisfy University's obligation to pay, and in no event shall University be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

4.5. Taxes. University is exempt from paying Minnesota sales and use taxes on certain purchases, as provided in Minnesota Statute, Section 297A.70 Subd 2(a). Contractor shall not charge University for such sales and use taxes. Alternatively, Contractor shall be responsible for the payment of any and all sales taxes to the Minnesota Department of Revenue relating to the following taxable items sold pursuant to this Agreement; construction materials, leasing of motor vehicles, food and lodging, [See Minnesota Statute 297A.70 Subd 2(b)]. Contractor shall promptly reimburse University for any and all such sales and use taxes paid by University to any governmental authority on behalf of Contractor including penalties and interest with respect thereto, and including any and all expenses (including attorneys' fees) or damages that result from a failure by Contractor to properly remit or reimburse University for any and all such sales and use taxes provided above.

University may be obligated by state and federal law to withhold state and federal taxes from the consideration stated in paragraph 3. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding. See Section 4.25 regarding Contractor's obligation to provide a valid TIN and certification as to whether federal backup withholding applies.

4.6. Risk of Loss. With respect to any goods provided under this Agreement, risk of loss shall not pass to University until such goods have been actually received and accepted by University, pursuant to Section 4.3 ("Inspections and Improper Delivery"), at the destination specified by University. Contractor assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any agreement by University to pay freight, express, or other transportation charges.

4.7. Use of University Name or Logo. Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University in any sales promotion work or advertising, or any form of publicity, without the written permission of University's Purchasing Services in each instance.

4.8. Terms of Payment. Subject to the conditions below, payment shall be made by University within thirty (30) days upon Contractor's presentation of an invoice for goods delivered or services rendered pursuant to this Agreement. In the case of goods, however, payment shall not be due prior to thirty (30) days from the date the invoice is received by

University at the address indicated in Section 4.24 or from the date the goods are delivered to the destination specified herein, whichever is later. University may withhold payment in whole or in part for goods or services found by University to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.

4.9. Termination. University may terminate this Agreement in whole or in part for its sole *Convenience*. Upon notice of such termination, Contractor shall immediately stop all work including shipment of goods under this Agreement and cause its suppliers and/or subcontractors to cease their work for this Agreement. In the event of such termination, Contractor shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by University in its sole discretion, for work or services satisfactorily performed. In no event shall Contractor be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided.

University may terminate this Agreement in whole or in part for *Cause* upon seven (7) days written notice if Contractor fails to comply with any material term or condition of this Agreement, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Agreement. Late delivery of goods or services, or delivery of goods or services that are defective or do not conform to the Agreement shall, without limitation, be causes allowing University to terminate for cause. In this event, University will not be liable for any amounts; but Contractor shall be liable to University for all losses, damages, and expenses, including, without limitation, the excess cost of recouping similar goods or services; shipping charges for any items University may at its option return to Contractor, including items already delivered, but for which University no longer has any use because of Contractor's default; and amounts paid by University for any items University has received but returns to Contractor. If a determination is made that University improperly terminated this Agreement for Cause, then such termination shall be deemed to have been for University's Convenience.

4.10 Independent Contractor. CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF UNIVERSITY. NEITHER CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF UNIVERSITY. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND UNIVERSITY TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF CONTRACTOR, ITS EMPLOYEES, AND AGENTS.

4.11. Non-Waiver. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

4.12. Audit and Retention of Books and Records. University shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Contractor, its agents, and subcontractors to verify Contractor's performance and all expenses submitted pursuant to the terms of this Agreement. Contractor shall make such items available for inspection during normal business hours at Contractor's place of business. All such items shall be retained by Contractor during the term of this Agreement and for a period of three (3) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Agreement shall be retained by Contractor, its agents and subcontractors, if any, until the claim has been resolved.

4.13. Limitation on University Liability. IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. UNIVERSITY'S MAXIMUM OBLIGATION UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT SET FORTH IN SECTION 3.1.

4.14. Changes. University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the goods and services to be provided under this Agreement. Promptly upon receipt of the details of any such change. Contractor shall either advise that the change will not affect its costs, or furnish: (i) a breakdown of estimated cost and changes in the compensation attributable thereto, and (ii) a statement of any necessary changes in the time of completion. Contractor's failure to advise University in writing within ten (10) days of the effect of any change hereunder shall constitute Contractor's consent to conform to the change without increase in the amount to be paid by University or the time of completion or without change to other terms and conditions of this contract.

4.15. University Information. Contractor agrees that any information it receives during the course of its performance, which concerns the personal, financial, or other affairs of University, its regents, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13.

4.16. Ownership of Works and Intellectual Property Rights. The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for University and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by University. Contractor agrees that all copyrightable Works shall be considered a "work made for hire" and that University is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17

U.S.C., Sections 101 and 201(b), Contractor shall without further compensation, assign all rights Contractor may have in the Works to University. Contractor waives any and all statutory moral rights in the Works which Contractor may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Contractor shall, without further compensation, disclose information to University and execute such documents as may be reasonably necessary to assist University in securing and enforcing rights in the Works and related proprietary rights.

4.17. Insurance. Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Agreement, Contractor shall obtain and keep in force comprehensive general and professional liability insurance, including coverage for death, bodily or personal injury, property damage, including liability and automobile coverages, with limits of not less than \$1,000,000 each claim and \$1,000,000 each occurrence. All such certificates evidencing such insurance shall name the Regents of University as an additional insured. Contractor represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance for worker's compensation and the liability insurance, upon request. Contractor shall provide all such certificates to University prior to commencement of services or delivery of goods and shall reference the Contract for Professional Services Number listed on the front of this Agreement when providing such certificates.

4.18. Indemnification. Contractor agrees to release, defend, indemnify, and hold harmless University, its regents, faculty members, students, employees, and agents from all liability, injuries, claims, damages (including claims of bodily injury, property damage, or negligence), or loss, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of Contractor's negligent acts or omissions or in connection with Contractor's breach of warranties under Section 4.2. The foregoing agreement to release, defend, indemnify and hold harmless shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the intentional, willful, or wanton acts of University.

4.19. Anti-Kickback Enforcement Act of 1986. This Agreement is subject to the provision of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this Agreement, Contractor: (i) certifies that it has not paid kickbacks directly or indirectly to any University employee for the purpose of obtaining this or any other University Agreement; (ii) agrees to cooperate fully with any investigation involving a possible violation of the Act; and (iii) agrees to report any suspected violations of the Act to University's Director of Audits at (612) 625-1368. Contractor certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute, Section 15.43.

4.20. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business. University of Minnesota is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Contractor must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or

termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor will maintain non-segregated facilities for their employees and not allow their employees to perform services at any segregated facilities under its control. Contractor shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. Additionally, this Agreement is subject to the requirements of and Contractor agrees to comply with (i) Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities; (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans; (iii) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-47 1) in promoting affirmative action in Employment of the Handicapped; (iv) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged shall have maximum practicable opportunity to participate in University's Bidding process; and (v) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. University's Targeted Group Business Policy and Affirmative Action Policy are incorporated into this Agreement by reference and Contractor agrees to comply with such policies. If applicable, Contractor certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Agreement, Contractor certifies that it complies with all applicable federal and state laws as well as University policies related to non-discrimination, equal employment opportunity, and affirmative action.

4.21. Compliance with Laws and Debarment Contractor certifies that all goods or services furnished under this Agreement shall comply with all applicable federal, state, and local laws and regulations, as well as University and Regents policies and procedures, regardless of whether such laws and regulations are specifically set forth in this Agreement. Contractor certifies that no chlorofluorocarbon (CFC) processed products will be used in fulfilling this Agreement or in the packaging connected therewith, all as defined in Minn. Statute, Section 116.70. Contractor represents that it is not currently debarred or suspended by any federal agency from doing business with the federal government. Contractor shall notify University if it becomes debarred or suspended during the term of this Agreement. University may immediately terminate this Agreement in the event of such termination or suspension and Contractor shall be responsible for any costs incurred by University in connection therewith. If Contractor has been notified by University that the goods or services provided hereunder are being procured with federal funds, the federal requirements set forth in Exhibit B shall be incorporated into this Agreement and Contractor shall adhere to such additional requirements. If federal contract funds are not being used, Contractor will not receive Exhibit B.

4.22. Anti-Trust Violations. Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the buyer. Therefore, Contractor hereby assigns to University, as the buyer of goods and services under this Agreement, any and all claims for such overcharges as to goods and services purchased in connection with this Agreement.

4.23. Rights of the Federal Government to Inventions Made Under a Contract or Agreement. To the extent this Agreement involves the performance of experimental, developmental, or research work, the rights of the Federal Government and University to any resulting inventions shall be determined in accordance with 37 CFR part 401, "*Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,*" and any implementing regulations issued by the awarding agency.

4.24. Notices/Administration. Except as otherwise provided in this Agreement, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth in the Cover Sheet or to such other address as such party may designate by notice given pursuant to this section.

4.25. Acknowledgement. In signing, Contractor certifies under penalties of perjury (see Section 6109 of the IRS Code for further penalties) that: (1) the taxpayer ID number (TIN) provided to University is correct; (2) it is not subject to back up withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding; (3) it is a U.S. person (including a U.S. resident alien); and (4) it has full authority to execute this Agreement and perform its obligation under this Agreement. Contractor must cross out and initial item (2) and notify University in writing at Purchasing Services, 1300 South Second Street, Suite 560, Minneapolis, MN 55454-1082, if Contractor has been notified by the IRS that it is currently subject to backup withholding because of under reporting interest or dividends on its tax return. Contractor must cross out item (3) above if it is not a U.S. person for tax purposes or U.S. resident alien.

Notwithstanding this certification, Contractor hereby acknowledges that University has the right to withhold amounts for federal backup withholding if such withholding is required by written notice from the Internal Revenue Service issued subsequent to the date this agreement is executed.

4.26. University Contract Number. Contractor agrees to place University Contract Number indicated at the top of this document on any packages, invoices, packing slips, notices and correspondence related to this Agreement.

4.27. Return of Data. Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of University, Contractor shall return all documents, data and other information provided by University to Contractor, or Contractor's employees or agents in connection with this Agreement. Additionally, Contractor, upon the request of University, shall destroy all copies of such University provided data, documents, or information in Contractor's possession or control, and provide University with proof of such destruction.

4.28. "Most Favored Customer" Provision. If Contractor has negotiated terms or conditions for the sale of goods or services to another client of Contractor which University deems more favorable than those contained herein, University may request and shall be afforded the opportunity to purchase those goods or services on the same terms and conditions as Contractor has negotiated to provide a third party under reasonably similar circumstances.

4.29. Cash Discount Period. The cash discount or other similar prompt payment discount period available to University shall commence on the later of: (i) University's receipt of all goods and services under this Agreement, or (ii) University's receipt of Contractor's invoice.

4.30. Fund Availability; Federal Funds Contingency. Financial obligations of University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement is funded in whole or in part with federal funds, University's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof.

4.31. Severability. If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

4.32. Survivability. The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

4.33. Gramm-Leach-Bliley Security Compliance. This Contract for Professional Services is subject to, and Contractor agrees to comply with, the provisions of the Gramm-Leach-Bliley Act. Throughout the term of this Contract for Professional Services, Contractor shall implement and maintain 'appropriate safeguards,' as that term is used in §314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314 (the 'FTC Rule'), for all 'customer information,' as that term is defined in §314.2(b) of the FTC Safeguard Rule, owned by University and delivered to Contractor pursuant to this Contract for Professional Services. Contractor shall assist and cooperate in University's efforts to ensure and confirm Contractor's compliance with the terms of this section, including, without limitation: (i) permitting employees or representatives of University to inspect on Contractor's premises Contractor's business records, procedures, rules and practices pertinent to the aforementioned 'safeguards'; and (ii) making available to such employees or representatives of University employees or representatives of Contractor's who have authority to maintain or are knowledgeable of such 'safeguards'. Contractors shall promptly notify University in writing, of each instance of: (i) unauthorized access to or user of that customer information that could result in substantial harm or inconvenience to a customer of University, or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that customer information. Within thirty (30) days of the termination or expiration of this Contract for Professional Services, Contractor shall destroy and shall cause each of its agents to destroy all records, electronic or otherwise, in its or its agent's possession that contain such

customer information and shall deliver to University a written certification of the destruction. Contractor shall indemnify and defend and hold University and its regents, employees, agents and contractors harmless from any and all claims, demands, suits, actions, liabilities and expenses (including reasonable attorneys' and investigative fees) arising out of an act or omission by Contractor or its agents and contractors that results in: (i) a person having access to or use of customer information in violation of law or this Contract for Professional Services; or (ii) the misuse, alteration, destruction or material alteration of customer information in violation of law or this Contract for Professional Services. Contractor shall reimburse University for its direct damages (e.g., costs to reconstruct lost or altered information) arising out of an act or omission by Contractor or its agents and contractors that results in: (i) a person having access to or use of customer information in violation of law or this Contract for Professional Services, or (ii) the misuse, alteration, destruction or material alteration of customer information in violation of law or this Contract for Professional Services.