



Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Voice: 651.296.2600
Fax: 651.297.3996

August 8, 2023

Mr. Steve Perlstein
Mohawk Lifts LLC
65 Vrooman Ave.
Amsterdam, NY 12010

Dear Mr. Perlstein:

The following documents are enclosed for you to complete and return:

- Participating Addendum 0000000000000000000227911 (227911) for Vehicle Lifts and Garage Associated Equipment through NASPO ValuePoint Contract No. CW7258 for Vehicle Lifts and Garage Associated Equipment.
- Minnesota Exhibit A, showing the Minnesota General Terms, Conditions, and Specifications, which includes the following:
 - Workforce and Equal Pay Declaration Form
 - Service and Delivery Form

Please sign and return **all sets** of documents, **VIA EMAIL**, to **Karen McIntyre** at the karen.mcintyre@state.mn.us by **August 15, 2023**.

- A certificate of insurance from your insurer, in the amounts called for in the Contract, ***is required now***.

Instructions for properly completing the Contract documents are enclosed. Documents that are not properly executed will be returned to you. Failure to submit executed forms in the time required may result in cancellation of the award. Upon receipt of the properly executed forms, and after signatures are obtained from the appropriate State authorities, a copy of the completed Contract documents will be sent to your company.

If you have any questions, please contact me.

Sincerely,

Karen McIntyre
Acquisition Management Specialist

Enclosure

PARTICIPATING ADDENDUM
NASPO ValuePoint
For Vehicle Lifts and Related Garage Equipment
Between the State of Minnesota and Mohawk Lifts LLC

NASPO ValuePoint Contract No. CW7258

State of Minnesota Contract No. 227911

1. **Scope:** Minnesota and Cooperative Purchasing Venture Program members, as defined in the attached Minnesota Exhibit A, may purchase the products and/or services available in the Participating Addendum. The Participating Addendum is not a purchase order, nor does it guarantee any purchases will be made.
2. **Changes:** The additional terms and conditions contained in Minnesota Exhibit A, which is attached and made part of the Participating Addendum, are hereby incorporated by reference. In the event of a conflict between the terms contained within Minnesota Exhibit A and the NASPO ValuePoint Master Agreement, Minnesota Exhibit A shall prevail. The parties agree that this provision of the Participating Addendum supersedes the Standard Contract Terms and Conditions set forth in the NASPO ValuePoint Master Agreement. In the event that any provision of the Participating Addendum or NASPO ValuePoint Master Price Agreement is contrary to Minnesota law, such provision shall be null and void. The Participating Addendum shall be governed by Minnesota law.

No price adjustments are allowed unless approved by the Lead State for the NASPO ValuePoint Master Agreement and adopted by the State of Minnesota through a fully executed Participating Addendum amendment.

3. **State's Authorized Representative and Primary Contact:** The State's Authorized Representative and the primary contact individual for the Participating Addendum is identified below. All notifications to the State shall be in writing and addressed as follows:

Name:	Karen McIntyre or successor
Title:	Acquisition Management Specialist
Address:	Minnesota Department of Administration Office of State Procurement 50 Sherburne Ave., 112 Administration Bldg. St. Paul, MN 55155
Telephone:	651.201-3124
Fax:	651.297.3996
E-mail:	karen.mcintyre@state.mn.us

4. **Responsible Contractor:** Pursuant to Minn. Stat. § 16C.285, Contractors must certify compliance with the following items:
 1. I am an owner or officer of the responding company, and I certify under oath that my company is in compliance with each of the applicable provisions as set forth in Minn. Stat. § 16C.285, subd. 3, and will provide verification upon request by the contracting agency.
 - 1.1 By signing the Certification section below, I am certifying that my company has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative.

Contact the Office of the Minnesota Secretary of State with questions about satisfying this requirement.
 2. If my company retains subcontractors I will submit a supplemental verification confirming subcontractor compliance with Minn. Stat. § 16C.285, subd. 5 (see Exhibit A, Supplement 2).

- 3. If my company retains additional subcontractors with which it will have a direct contractual relationship following contract award, I will submit supplemental verification confirming subcontractor compliance with Minn. Stat. § 16C.285, subd. 5, within 14 days after retaining any such additional subcontractors (see Exhibit A, Supplement 3).

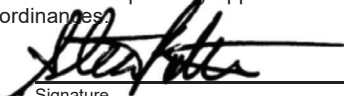
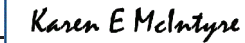

Signing the section below constitutes a signed statement affirming compliance with each of the applicable provisions as set forth in Minn. Stat. § 16C.285, subd. 3.

The following documents, in order of precedence, are incorporated herein by reference and constitutes the entire Contract between the Contractor and the State:

- a. The Minnesota Participating Addendum
- b. The NASPO ValuePoint Master Agreement
- c. The NASPO ValuePoint Solicitation
- d. Response to the NASPO ValuePoint Solicitation

In the event of a conflict in language among any of these documents, the terms and conditions set forth and/or referenced in this Participating Addendum shall prevail over conflicting terms and conditions.

IN WITNESS WHEREOF, the parties have executed the Participating Addendum as of the date of execution by all parties below.

<p>1. Contractor: Mohawk Lifts LLC The Contractor certifies that the appropriate person(s) have executed this Participating Addendum on behalf of the Contract Vendor as required by applicable articles, bylaws, resolutions, or ordinances.</p> <p>By: <u></u> <small>Signature</small> <u>Steve Perlstein</u> <small>Printed Name</small></p> <p>Title: <u>President</u></p> <p>Date: <u>8/22/2023</u></p> <p>By: _____ <small>Signature</small></p> <p>Printed Name _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>2. Government Entity: State of Minnesota Office of State Procurement In accordance with Minn. Stat. § 16C.03, Subd. 3. <small>DocuSigned by:</small></p> <p>By: <u></u> <small>AEF46840CAC2428...</small></p> <p>Title: <u>Acquisition Management Specialist</u></p> <p>Date: <u>9/13/2023</u></p> <p>3. State of Minnesota Commissioner of Administration Or delegated representative <small>DocuSigned by:</small></p> <p>By: <u></u> <small>288B69CD33E54E4...</small></p> <p>Date: <u>9/13/2023</u></p>
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Minnesota Exhibit A

Minnesota General Terms, Conditions, and Specifications

1. DEFINITIONS.

a. CPV Members.

The Contract will be available to all CPV members. Minn. Stat. § 16C.03, subd. 10 authorizes the State, acting through its Office of State Procurement, to enter into purchasing agreements with one or more governmental units and other entities allowable by law, as described in Minn. Stat. § 471.59, subd. 1, to exercise jointly the purchasing powers and functions each has individually. This authority is referred to as the Cooperative Purchasing Venture program. For more information, see State website www.mmd.admin.state.mn.us.

The Contractor agrees to extend the Contract to CPV members at the same prices, terms, conditions, and specifications. With the approval of the Contractor, a CPV member may add additional terms to its ordering document applicable to the CPV member's purchasing activities. Such additional terms shall not modify, diminish, or derogate the terms applicable to the State.

b. State Agencies. This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.

c. Ordering Entity. This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.

d. State and State of Minnesota. These two terms apply to the Minnesota Department of Administration, Office of State Procurement (OSP), representing the State of Minnesota as the contracting agency for the Participating Addendum.

e. Contractor. These two terms apply to the awarded vendor from the NASPO ValuePoint Master Agreement that OSP selects to receive a Participating Addendum.

2. **EFFECTIVE DATE and CONTRACT PERIOD.** The Contract shall be effective upon the date of final execution by the State of Minnesota. The Contract term will begin on August 15, 2023, or on the date of Participating Addendum execution, whichever is later, to March 31, 2028.

3. **STATE AUDITS.** Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract.

4. **ASSIGNMENT OF ANTITRUST.** Upon the request of the State of Minnesota, Contractor will irrevocably assign to State any state or federal antitrust claim or cause of action that the Contractor now has, or which may accrue to the Contractor in the future, in connection with any goods, services, or combination provided by Contractor under the terms of this Contract.

5. **INSURANCE.** If applicable, prior to execution of the Participating Addendum, the Contractor will be required to provide a copy of a Certificate of Insurance, including workers' compensation insurance coverage requirements of Minn. Stat. § 176.181 subd. 2, and other coverages per the insurance requirements if included in the Participating Addendum.

6. **INDEMNIFICATION,**

6.1. In the performance of this Contract, the Indemnifying Party 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 Indemnifying Party's:

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

The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or Contractor's agents or employees, and to the fullest extent

permitted by law. 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 Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

6.2. Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

7. **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.

8. **GOVERNMENT DATA PRACTICES.** The Contractor 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 Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

9. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and equipment during periods of transportation, and installation by the Contractor and in the possession of the Contractor or their authorized agent.

10. **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.

11. **CONTRACT USE BY STATE AGENCIES.** To the extent applicable, the Contract does not prohibit state agencies from using their delegated purchasing authority to procure similar goods and services from other sources.

12. **AFFIRMATIVE ACTION.**

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

12.1. **Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the Contractor 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 principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

12.2. **General.** Minn. R. 5000.3400-5000.3600 implements 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 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 Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

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

AFFIRMATIVE ACTION FOR DISABLED WORKERS

12.3.1. The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The 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.

- 12.3.2. 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.
- 12.3.3. In the event of the Contractor'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.
- 12.3.4. 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. 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.
- 12.3.5. 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 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.
- 12.4. 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 the State.
- 12.5. Certification. The Contractor 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.
13. **EQUAL PAY CERTIFICATION.** If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.
14. **PROMPT PAYMENT AND INVOICING.**
- 14.1. Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.
- 14.2. The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.
15. **COMPENSATION AND CONDITIONS OF PAYMENT**
- 15.1. Compensation. The State will pay for performance by the Contractor under this Contract in accordance with the breakdown of costs as set forth in Exhibit D which is attached and incorporated into this Contract.
- 15.2. Conditions of Payment. All duties performed by the Contractor under this Contract must be performed to the State's satisfaction 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.

16. **PURCHASE ORDERS (PO).** The parties agree that there is no minimum order requirements or charges to process an individual purchase order unless otherwise stated in the Contract. The Purchase Order number must appear on all documents (e.g., invoices, packing slips, etc.).

17. **PURCHASING CARDS. Not Applicable**

18. **TAXES.**

18.1. For Purchases which include installation: The State's Direct Pay permit will not apply for orders through this contract. The Contractor must include in their pricing any applicable State or Federal sales, excise, or use tax on all materials, supplies, and equipment that are to be utilized on a project.

18.2. For Purchases for Equipment only: Do not add sales tax to the prices being offered. State Agencies hold a Direct Payment Authorization Letter which is used to pay applicable taxes directly to the Department of Revenue. Contractors may go to <http://www.revenue.state.mn.us> to learn about the applicable sales tax (search "Fact Sheet 142").

18.3. If orders are issued by Cooperative Purchasing Venture (CPV) Members: The Contractor should confirm all of the tax requirements with the ordering entity.

19. **SHIPPING REQUIREMENTS.** All shipments shall be FOB Destination. Freight charges shall be prepaid and allowed unless otherwise stated in the NASPO ValuePoint Master Agreement.

20. **ADDITIONAL CONTRACT TERMS.**

20.1. All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery.

20.2. No substitutions or cancellations are permitted without approval of the Ordering Entity.

20.3. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contractor.

20.4. In the event of default, the State reserves the right to pursue any other remedy available by law.

20.5. A Contractor may be removed from the vendor's list, suspended, or debarred from receiving a Contract for failure to comply with the terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.

21. **AMENDMENTS, WAIVER, AND CONTRACT COMPLETE.**

21.1. Assignment. The Contractor 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 authorized parties or their successors.

21.2. Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.

21.3. 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.

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

22. **INTELLECTUAL PROPERTY RIGHTS.**

22.1. Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

22.1.1. "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 Contractor, its employees, agents, or subcontractors, in the performance of this Contract.

- 22.1.2. "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.
- 22.1.3. "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 Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes Documents.
- 22.2. Ownership. 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. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor 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 Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor 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.
- 22.3. Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.
- 22.4. Obligations.
 - 22.4.1. 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 Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.
 - 22.4.2. Representation. The Contractor must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.
 - 22.4.3. Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor'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 Contractor 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 Contractor's or the State's opinion is likely to arise, the Contractor 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.

23. TERMINATION OF THE PARTICIPATING ADDENDUM.

- 23.1. Termination for Convenience. The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination for convenience, the Contractor will be entitled to payment, determined on a pro rata basis, for services or goods satisfactorily performed or delivered.

- 23.2. Termination for Breach. If the Contractor fails to perform according to the contract terms and conditions, the State is authorized to immediately cancel the Contract or purchase order, or any portion of it, and may obtain replacement goods or services and charge the difference of costs to the defaulting Contractor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contractor may be removed from the vendors list, suspended, or debarred from receiving a Contract for failure to comply with terms and conditions of the Contract, or for failure to pay the State for the cost incurred on the defaulted Contract.
- 23.3. 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 addressed within this Contract. Termination must be by written notice to the Contractor. The State 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 services satisfactorily performed to the extent that dedicated 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 Contractor notice of the lack of funding. This notice will be provided within a reasonable time of the State's receiving notice.

24. **ADMINISTRATIVE PERSONNEL CHANGES.** After execution of this Participating Addendum the State must be notified of intended changes in the Contractor's administrative personnel as soon as practicable.

25. **PUBLICITY AND ENDORSEMENT.**

- 25.1. 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, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.
- 25.2. Endorsement. The Contractor must not claim that the State endorses its products or services.

26. **AMERICANS WITH DISABILITIES ACT (ADA).** Products provided under the Contract must comply with the requirements of the Americans with Disabilities Act (ADA). The Contractor's catalog and other marketing materials utilized to offer products under the Contract must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contractor agrees that the customer can assume the product meets or exceeds the ADA requirements.

27. **NONVISUAL ACCESS STANDARDS.**

Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

28. USAGE REPORT.

Contractor must track and report to the State usage data on this Contract (Usage Reports). Usage Reports should be sent via email to osp.usagereports@state.mn.us. A Usage Report must identify the State Contract Number and provide the following information:

- The total amount of spend under the Contract by the State and other entities,
- The total amount of spend by State agencies, and
- The total amount of spend by other entities (CPV members).

Contractor must send a quarterly Usage Report, or as otherwise requested. Quarters are as follows:

- First Quarter, from July 1 to September 30,
- Second Quarter, from October 1 to December 31,
- Third Quarter, from January 1 to March 31, and
- Fourth Quarter, from April 1 to June 30.

A quarterly Usage Report is due within thirty days of the end of a quarter. A requested Usage Report is due within thirty days from when the request was made. Contractor must provide the State with a final Usage Report within 30 calendar days of the expiration or termination of the Contract. Failure to provide a Usage Report may result in the State cancelling the Contract. This term survives the expiration or termination of the Contract.

29. ADMINISTRATIVE FEE.

Contractor must remit to the Department of Administration, Office of State Procurement on a quarterly basis an administration fee of 1% (.01 multiplication factor) of the total amount of spend under the Contract as reported in the Usage Report (Administrative Fee). The Administrative Fee is due within thirty days of the end of a quarter. The Administrative Fee may be submitted through Automated Clearing House (ACH) or by check. Contact CPV.Program@state.mn.us for detailed information on the ACH payment option. If paying by check, the check should be made payable to the State of Minnesota, and submitted to:

Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

30. SEVERABILITY. If any provision of the Contract, including items incorporated by reference, is declared, or found to be illegal, unenforceable, or void, then both the State and the Contractor shall be relieved of all obligations arising under such provisions; if the remainder of the Contract is capable of performance it will not be affected by the declaration or finding and will be fully performed.

31. ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE. In accordance with Minn. Stat. § 16A.40 the Contractor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.

32. COPYRIGHT. The Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

33. SURVIVABILITY. In the event the term of any order or Professional/Technical Services work order (“Order”) placed under this Contract extends past the termination or expiration of this Contract, the terms and conditions of this Contract shall remain in full force and effect as it applies to such order and will continue in effect for such order until the term of that order expires or the order is cancelled or terminated in accordance with the terms of this Contract.

34. IT ACCESSIBILITY STANDARDS.

Contractor acknowledges and is fully aware that the State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content

Accessibility Guidelines (WCAG) and Section 508 which can be viewed at:
<https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

When updates or upgrades are made to the products or services available through this Contract, the Contractor agrees to document how the changes will impact or improve the product's or service's accessibility and usability. This documentation, upon request, must be provided to the State in advance of the change, occurring within an agreed upon timeframe sufficient for the state to review the changes and either approve them or request a remediation plan from the Contractor. Contractor warrants that its Products comply with the above-mentioned accessibility Standards and agrees to indemnify, defend, and hold harmless the State against any claims related to non-compliance of Contractor's Product with the above-mentioned accessibility Standards. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for the State to consider the Contractor in default.

35. E-VERIFY CERTIFICATION (in accordance with Minn. Stat. § 16C.075).

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

36. HAZARDOUS SUBSTANCES.

To the extent that the goods to be supplied to the State by the Contractor contain or may create hazardous substances, harmful physical agents, or infectious agents, as set forth in applicable State and federal laws and regulations, the Contractor must provide the State with Material Safety Data Sheets regarding those substances. A copy must be provided upon request. Goods and containers supplied to the State must be labeled in compliance with state and federal laws, rules, and regulations.

These terms apply to goods supplied under this contract:

- 36.1. Products Containing Triclosan Banned. The Contractor must comply with Minn. Stat. § 145.945.
- 36.2. Products Containing Certain Types of Polybrominated Diphenyl Ether Banned. The Contractor must comply with Minn. Stat. § 325E.385-325E.388).
- 36.3. Coal Tar Sealant Use and Sale Prohibited. The Contractor must comply with Minn. Stat. § 116.202.
- 36.4. Products Containing Mercury. The Contractor must comply with Minn. Stat. 116.92.

37. SOFTWARE AND LICENSING AGREEMENTS. Prior to the State signing the Participating Addendum, Contractor must submit to the State of Minnesota for approval any license agreements, maintenance agreements, or any other documents pertinent to the products and/or services in this Participating Addendum.

38. TAXPAYER IDENTIFICATION: The Contractor shall be registered as a vendor to the State in the SWIFT Procurement System. Registration must be done online at <http://www.mmb.state.mn.us/vendorresources>.

39. **CERTIFICATION OF NONDISCRIMINATION (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

Exhibit B: Insurance Requirements

1. Notice to Contractor.

- 1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2 The Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract
- 1.3 The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
- 1.4 The State reserves the right to immediately terminate this 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.
- 1.5 If the Contractor uses another entity, including but not limited to a dealer, reseller, or distributor (collectively referred to as "Contractor's reseller") to provide goods or services under this contract, the following terms apply:
 - 1.5.1 Because the Contractor's reseller(s) are independently owned and operated, and maintain their own insurance, the Contractor's reseller's insurance coverage must be evidenced by its own Certificate of Insurance. The Contractor's reseller's Certificate of Insurance must meet all the insurance requirements and limits set forth in the Contract.
 - 1.5.2 The Contractor shall collect, review, approve, and maintain the applicable Certificates of Insurance, including but not limited to General Liability, Auto Liability, Umbrella, Workers' Compensation, and Garagekeepers or Property of Others, for all Contractor's resellers that will be providing goods or services under this contract. The Contractor acknowledges compliance with this provision. The Contractor must provide copies of the dealers' insurance documentation to the State upon request.
 - 1.5.3 If a claim is made against a Contractor's reseller, and the Contractor's reseller's insurance coverage did or does not cover the claim, the Contractor is responsible for the claim because the contract is with the Contractor. The Contractor must pay any uninsured claims out-of-pocket. The State may enforce the indemnity clause in the contract.

2. Notice to Insurer.

- 2.1 The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 2.2 Insurance certificate holder should be addressed as follows: [For PT and Agency RFB contracts - Add agency contract holder's address. Do not use Department of Administration address detailed below.

State of Minnesota
50 Sherburne Avenue, Room 112
St. Paul, MN 55155

3. Additional Insurance Conditions. The following apply to the Contractor, or the Contractor's subcontractor:

- 3.1 Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Contract.

- 3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State;
- 3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- 3.5 Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability.
- 3.6 Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
- 3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

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

- 4.1 **General Liability or Garage Liability Insurance.** The Contractor, or their Subcontractor, shall 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.

General Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State. Insurance **minimum** limits are as follows:

- \$2,000,000 - Per Occurrence
- \$2,000,000 - Annual Aggregate
- \$2,000,000 - Annual Aggregate applying to Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal & Advertising Injury
- Blanket Contractual
- Products and Completed Operations
- A waiver of subrogation in favor of the State of Minnesota, as Owner.
- **State of Minnesota Named as an Additional Insured**

- 4.2 **Automobile Liability or Garage Liability Insurance.**

The Contractor, or their Subcontractor, shall maintain insurance to cover liability arising out of the ownership, operation, use, or maintenance of all owned, non-owned and hired automobiles.

Auto Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on mobile equipment.

Garage Liability insurance is required for Contractors, or their Subcontractor, performing warranty or service work on autos or equipment attached to autos, including vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the State.

Insurance minimum limits are as follows: \$2,000,000 - Per Occurrence - Bodily Injury and Property Damage Combined Single Limit

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor, or as directed by the State.

- A waiver of subrogation in favor of the State of Minnesota, as Owner.

4.3 Workers' Compensation Insurance. Statutory Compensation Coverage. 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, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

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

- A waiver of subrogation in favor of the State of Minnesota, as Owner.

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

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

4.4 Professional Liability, Errors, and Omissions. 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. Insurance **minimum** limits are as follows:

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

- A waiver of subrogation in favor of the State of Minnesota, as Owner.

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

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

Exhibit C – Construction Terms and Conditions for Equipment Installation

1. Subcontracting.

Only subcontractors that have been approved by the State's Authorized Representative can be used for this Contract. See attachments to Exhibit A, Supplements 2, and 3, Responsible Contractor forms.

After the effective date of the Contract, the Contractor shall not, without submitting Supplement 3 to Exhibit A and receiving prior written approval of the State's Authorized Representative, subcontract for the performance of any of the Contractor's obligations that were not already approved for subcontracting when the Contract was awarded. During this Contract, if an approved subcontractor is determined to be performing unsatisfactorily by the State's Authorized Representative, the Contractor will receive written notification that the subcontractor can no longer be used for this Contract.

The provisions of the Contract shall apply with equal force and effect to all approved subcontractors engaged by the Contractor. Notwithstanding approval by the State, no subcontract shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performances of the obligations contemplated by the Contract.

2. Subcontractor Payment.

In accordance with Minn. Stat. § 16A.1245, the Contractor shall, within ten (10) days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contractor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are no remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

3. Responsible Contractor Requirement (Minn. Stat. § 16C.285, subd. 3).

List and submit all first-tier Subcontractors on Supplement 2, titled "Supplement 2 – First-Tier Subcontractors List." This may be submitted with the response, but it must be submitted prior to contract execution. If additional Subcontractors are added to a project after execution of a contract, complete and submit the attachment titled "Supplement 3 Additional Subcontractors List" within 14 days of retaining the additional Subcontractors. Supplement 3 verifies the additional Subcontractors have been certified as in compliance with the requirements of Minn. Stat. § 16C.285. Upon request from the ordering entity, the Contractor shall submit copies of the signed certifications of compliance from all Subcontractors of any tier.

4. Prevailing Wage.

All State funded or partially State funded work against this contract is subject to the prevailing wage requirements pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120 as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and all tiers of subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

The Contractor and Subcontractor shall furnish to the ordering entity all payrolls, of all workers on the project, via email as attachments, to the email address provided on the purchase order. If an email address is not included on the purchase order, contact the ordering entity to obtain the appropriate email address.

The Contractor and Subcontractor must submit the State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance Form within fourteen (14) days after the end of each pay period. The forms are available on the Office of State Procurement (OSP) website at <http://www.mmd.admin.state.mn.us/mn02000.htm>. No other payroll forms will be accepted to meet this requirement.

The Contractor and Subcontractor must complete the Prevailing Wage Payroll Report in Microsoft Excel, and the Statement of Compliance in an Adobe PDF format. The subject line of the email must provide the company name, contract/purchase order number, and pay period ending dates.

The Department of Labor and Industry has a web page with Frequently Asked Questions about prevailing wages at <http://www.dli.mn.gov/business/employment-practices/prevailing-wage-information>

For questions regarding the Prevailing Wage Laws, contact the Department of Labor and Industry at 651.284.5091.

5. Federal Davis-Bacon Prevailing Wage.

Federally funded or partial federally funded projects are subject to the Davis-Bacon Act which requires that all contractors and all tier of subcontractors performing on federally funded projects (and contractors or subcontractors performing on federally assisted contracts under the related Acts) in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits listed in the contract's Davis-Bacon wage determination for corresponding classes of laborers and mechanics employed on similar projects in the area.

If a project is federally funded and Davis-Bacon prevailing wages are required, the ordering entity shall notify the contractor of this requirement upon a request for quotation. The ordering entity must download the Davis-Bacon wage determination for the county in which the project will take place. See Federal Wage Determinations Onlin.gov at <http://www.wdol.gov/dba.aspx>. If State and federal funds are being used to fund a project both State and federal prevailing wage requirements and wage rates must be included on the order. If the Davis-Bacon hourly rate classification is higher than the State's prevailing wage classification contractors may adjust their labor rate per classification.

Form WH-347 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls <https://www.dol.gov/agencies/whd/forms/wh347>. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

The Contractor and Subcontractor shall furnish to the ordering entity all payrolls, of all workers on the project, via email as attachments, to the email address provided on the purchase order. If an email address is not included on the purchase order, contact the ordering entity to obtain the appropriate email address.

If State and federal funds are being used to fund a project both State and federal prevailing wage requirements and wage rates must be included on the order.

6. CPV Requirements.

CPV members are responsible to confirm if they are subject to rules, regulations, or ordinances which establish the prevailing wage rate as defined in Minn. Stat. § 177.42.

7. How to Provide Information for the Minnesota Department of Transportation (MnDOT).

After receiving orders from MnDOT, Contractors are required to provide payroll information in the time frame specified by Statute and in the method specified by MnDOT below.

To meet Minn. Stat. § 177.43 requirements, the Contractor and Subcontractor(s) shall submit payroll forms according to MnDOT (Office of Construction, Transportation Building, Mail Stop 650, 395 John Ireland Blvd., St. Paul, MN 55155-1899) requirements.

- 7.1. All Contractors shall submit a payroll statement to the Department of Transportation, Minn. Stat. § 177.44, Subd. 7. The statement shall be submitted based on the Contractor's payment schedule. If a Contractor pays its employees biweekly, a payroll statement shall be submitted biweekly (MnDOT Contract Administration Manual,

Section .320). All Contractors shall pay its employees at least once every 15 days on a date designated in advance by the employer (Minn. Stat. § 181.10).

- 7.2. Each Statement submitted shall include all employees that performed work under the contract and provide at a minimum the following information (Minn. Rules 5200.1106, Subpart 10 and Minn. Stat. § 177.30):
 - 7.2.1. Contractor's name, address, and telephone number.
 - 7.2.2. State project number.
 - 7.2.3. Payroll report number.
 - 7.2.4. Project location.
 - 7.2.5. Workweek ending date.
 - 7.2.6. Name, social security number, and home address for each employee.
 - 7.2.7. Labor classification(s) and/or three-digit code for each employee.
 - 7.2.8. Hourly straight time and overtime wage rates paid to each employee.
 - 7.2.9. Daily and weekly hours worked in each labor classification, including overtime hours for each employee.
 - 7.2.10. Authorized legal deductions for each employee.
 - 7.2.11. Project gross amount, weekly gross amount, and net wages.
- 7.3. Payroll records may be submitted in any form provided it includes all the information contained in Subpart A (1-11) of this section. However, Contractors needing a payroll form may utilize the "front side" of the U.S. Department of Labor's, WH-347 Payroll Form. This form is available by visiting the Labor Compliance website (www.dot.state.mn.us/const/labor).
- 7.4. All payroll records must be accompanied with a completed and signed MnDOT 21658 – Statement of Compliance Form (Minn. Rules 5200.1106, Subpart 10).
- 7.5. The prime contractor is responsible for assuring that its payroll records and those of all subcontractors include all employees that performed work under this contract and accurately reflect the hours worked, regular and overtime rates of pay and classification of work performed (Minn. Stat. § 177.30(1)(2)(3)(4)).
- 7.6. The prime contractor is responsible to maintain all certified payroll records, including those of all subcontractors, throughout the course of a construction project and retain all records for a period of three years after the final contract voucher has been issued (Minn. Stat. § 177.30(4)).
- 7.7. At the end of each pay period, each contractor shall provide every employee, in writing an accurate, detailed earnings statement (Minn. Stat. § 181.032).
- 7.8. Upon request from the Minnesota Department of Labor and Industry (MN/DLI) or the Department of Transportation, the prime contractor shall promptly furnish copies of payroll records for its workers and those of all subcontractors, along with records, deemed appropriate by the requesting agency to determine compliance with these contract provisions (Minn. Stat. § 177.44, subd. 7 and Minn. Rules 5200.1106, Subpart 10).
- 7.9. At the Department of Transportation's discretion, the project engineer may administer the submission of payroll records according to MnDOT's Payroll Maintenance Program. The guidelines for the implementation and administration of this program are outlined in the MnDOT Contract Administration Manual, Section A(4)(d).
- 7.10. If, after written notice, the prime contractor fails to submit its payroll reports and certification forms and those of any subcontractor, the Department of Transportation may implement the actions prescribed in State Funded Construction Contracts Special Provisions Division A – Labor, Section XVI. NON-COMPLIANCE AND ENFORCEMENT available on-line at: <http://www.dot.state.mn.us/const/labor/documents/contractdocs/specprovdivastate.pdf>.

8. Payment and Performance Bonds.

The Contractor must have the capability to provide a payment and performance bond per project (furnish equipment and installation) if a project is estimated to be \$175,000.00 or greater per Minn. Statute 574.26.

The Contractor shall furnish the Performance Bond and a Labor and Material Bond (individually a "Bond" and collectively Bonds) to the public entity that has accepted a quote. The Performance Bond shall be in an amount equal to 100% of the full amount of the Order sum as security for the faithful performance of the Contract, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Order sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such Bonds shall be on forms approved by or provided by the Owner and shall name the Owner as primary Obligee.

The surety issuing the Bonds shall be satisfactory to the Owner, be licensed to issue Bonds in the State of Minnesota, shall be rated by A.M. Best an A-(minus) or better, and shall be within the limit set by the Treasury Department as the net limit on any single risk for the surety, or if co-sureties are utilized, the amount of each Bond shall be within the total of such limits set for a surety and any such co-sureties. There shall be no affiliation between the Contractor and any bonding agencies or agent used.

In the event of change orders that result in an increase in the Contract or Order Sum, the penal sum of each Bond shall increase in the amount of such change in the Contract or Order sum without obtaining the surety's consent up to a maximum of 10% of the penal sum. Any aggregate increase in the excess of 10% of the original penal sum shall require the surety's written consent. The Contractor shall be responsible for getting the consent and shall submit a copy of such consent to the Owner.

If the Owner determines that the surety providing the bonds no longer meets the requirements the Contractor shall obtain an adequate replacement surety that will provide acceptable bonds in the same form and amount as the bonds issued by the original surety. The Contractor shall pay the premium(s) on such new Bond(s). The Contractor acknowledges that further payments to the Contractor may not be made until the new surety has been qualified and approved.

9. Compliance with Tax Law Requirements.

- 9.1. The State cannot make final payment to the Contractor until the Contractor demonstrates that it and all its subcontractors have complied with the Income Tax withholding requirements of Minnesota Statutes, section 290.92 for wages paid for work performed under the contract. To establish compliance, the Contractor must submit a "Contractor Affidavit" either online or in paper form (IC134) to the Minnesota Department of Revenue. The Contractor will receive written certification of compliance when the Department of Revenue determines that all withholding tax returns have been filed and all withholding taxes attributable to the work performed on the contract have been paid. The Contractor must then provide this written certification to the Architect/Engineer to receive final payment.
- 9.2. Every subcontractor working on the Project must submit an approved "Contractor Affidavit" from the Minnesota Department of Revenue to the Contractor before the Contractor can file its own Contractor Affidavit. The Contractor is strongly encouraged to obtain the certification from each Contractor immediately following the Subcontractor's completion of work on the project. Delays in completing the forms until after the project is complete may result in significant additional work for the Contractor in collecting the required forms.
- 9.3. The Department of Revenue, in association with the Department of Employment and Economic Development, offers a free seminar to help contractors understand tax law requirements. The Department strongly urges the Contractor and all subcontractors to attend the "Employment Taxes & Employer Responsibilities Seminar" or similarly offered classes. You can find a schedule and more information on the Department's website at: <http://www.revenue.state.mn.us/businesses/withholding/Pages/EducationandOutreach.aspx>

Complying with this requirement is considered part of the work under this Contract. Contractor delay in complying with this requirement may cause the State to delay final payment and Contract Acceptance. The State may also report non-compliance to the Department of Revenue, which may result in enforcement action by the Department of Revenue.

10. Workmanship and Licenses.

Employ personnel skilled and experienced for the specific task required. Licensed journeymen shall be employed where required by law. Workmanship shall be of the highest quality and performed in a neat and expeditious manner. Qualified supervision shall be at the site when work is progressing.

All Contractors shall conform to the labor laws of the State of Minnesota and all other laws, ordinances, and legal requirements affecting their work in Minnesota.

11. Response Time.

Upon receipt of a purchase order, the Contractor shall contact the ordering entity where work is to be performed or materials to be delivered within five (5) calendar days acknowledging the receipt of order and to schedule work start dates. In the event the ordering entity determines that expedited action is required, the Contractor shall respond within seventy-two (72) hours. Orders requiring expedited action will indicate "expedited action response required" on the purchase order. If after an installation date has been established and the ordering entity requires a delay in the work, the ordering entity may, without penalty, delay installation for a period mutually agreed upon by both parties. Once the project is started, work is to proceed on a continuous basis. Interruptions in finishing a project must be approved by the ordering entity.

All products must be installed with a minimum of interruption to the normal business operation. All work will comply with the applicable national, state, and local codes and regulations. If normal service must be disrupted, the Contractor must consult with and obtain the approval of the ordering entity on how the service disruption will be handled prior to scheduling the work. Service Center assistance must be available 7 days a week, 24 hours a day. The Contractor must be able to provide first response to all service calls within one (1) hour. First response is defined as a returned phone call, or diagnostic and troubleshooting, and/or providing anticipated resolution.

12. Discovery of Hazardous Materials.

If hazardous materials are suspected or discovered during work operations, stop work and notify the ordering entity. Hazardous materials include, but are not limited to, asbestos containing materials, lead, PCB's, pollutants, contaminated soil, and mercury. Do not proceed with work until a written notice to continue work on the project is received by the ordering entity.

13. Delivery, Storage and Handling.

The Contractor shall be responsible to inspect all components on delivery to ensure that no damage occurred during shipping or handling for furnish and installation projects. For equipment only purchases, the ordering entity shall be responsible to inspect all components on delivery. Materials must be stored in original undamaged packaging in such a manner to ensure proper ventilation and drainage, and to protect against damage, weather, vandalism, and theft until ready for installation.

14. Utilities.

Contractor shall protect above and below grade utilities in conformance with Minnesota Department of Transportation (MnDOT) Specification 1507 and shall contact Gopher One Call at 651-454-0002 / 800-252-1166 (website: www.gopherstateonecall.org) to locate on-site utilities. Contractor shall provide the ordering entity with the Gopher State One Call locates confirmation number.

15. Fire Safety Instruction for Contractors.

Contractors are required to adhere to all current codes, standards and safety rules that are in effect at the time of the work being performed. These include, but are not limited to, building codes, electrical codes, safety codes, and ordering entity's personnel/property protection codes. Contractors are responsible for obtaining the ordering entity's personnel/property protection requirements from the facility in which they are performing the work. Contractor will also implement a "hot-work" and/or "impairment" safety program during the performance of their work if applicable.

16. Right to Inspect and Require Work.

Any work performed that is not in conformance with the specifications of the Contract, or the legal requirements governing the work, shall be subject to rejection. All rejected work shall be immediately replaced or modified at the Contractor's expense so as to conform to the Contract. If the State determines that the work being performed by the Contractor is not in strict conformance with the Contract, the State shall have the right to order the work of the Contractor wholly or partially stopped or suspended until any nonconforming work has been corrected. Such stoppage or suspension shall not invalidate or modify any terms of the Contract and no extra compensation or reimbursement will be allowed to the Contractor by reason of such stoppage or suspension.

17. Conduct.

All employees of the Contractor(s) shall conduct themselves in a professional and courteous manner at all times. Personnel deemed unacceptable by the State shall be replaced immediately. The State reserves the right to reject any employee.

18. Safety.

The ordering entity agrees to furnish safe and free access to all areas of work covered by this Contract for the purpose of executing the terms of this Contract. At its option, the ordering entity may request, and the Contractor will comply, that a member of the Contractor's staff be removed from working on projects for unsafe practices, violations of the Contract procedures, or other problems.

The Contractor shall take all reasonably necessary steps to provide for the safety of, and prevent damage, injury, or loss to:

- All persons
- The building and all other real or personal property at the work site.
- All equipment at the building, under the care, custody, or control of the Contractor or any of its employees.

The Contractor shall promptly notify the ordering entity if, during the term of the Contract, the Contractor observes or otherwise learns of any conditions which:

- In the Contractor's judgment, poses a threat to the safety of person or property.
- Adversely affects the equipment; or
- Is in violation of any applicable codes or regulations.

19. Administrative Personnel Changes.

The Contractor must notify the State's Authorized Representative of changes in the Contractor's key administrative personnel, in advance and in writing. Any employee of the Contractor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contractor. In the event that an employee is removed pursuant to a written request from the State's Authorized Representative, the Contractor shall have 10 working days in which to fill the vacancy with an acceptable employee.

20. Damage.

At its expense, the Contractor shall promptly remedy and repair all damage or loss to any property caused by the Contractor. The Contractor shall not be liable for any loss, delay, injury, or damage, whether direct or consequential, that may be caused by conditions beyond its control relating to acts of government, strikes, lockouts, fire explosion, theft, riot, civil commotion, war, malicious mischief, floods, or other acts unforeseen, or other situations beyond the Contractor's control. The Contractor shall not be responsible for damage or loss attributable to the fault or negligence of the ordering entity. The Contractor shall not be held liable for back charges if the delay of response time is caused by strikes, any preference or priority allocation order issued by the government, or any unforeseeable cause beyond the Contractor's control, or any cause the State determines justifies the delay.

21. Delays.

The Contractor shall notify the ordering entity immediately of any prospective delays in the completion of the projects. Such notice shall be given in writing as soon as the contractor recognizes the prospect of delay. The ordering entity must approve all such requests.

22. Work Not Permitted or Work Requiring Ordering Entity Approval.

Repair work, new installations or extension of an existing system covered by this Contract does not extend to modification of building structural, mechanical, or electrical components, even though this work may be incidental to – and or necessary for – repair/modification unless approved in advance by ordering entity or already specified by the Contract.

23. Change Orders.

The Contractor can only proceed with work beyond the work authorized by a purchase order if the ordering entity has approved the change and a Change Orders is being issued. The ordering entity may authorize change orders in writing or verbally.

The ordering entity may require, or the Contractor may make a written request (describing the nature of the proposed change) for certain changes in the scope of work described in a purchase order. If the ordering entity agrees to the changes and the costs for the changes, a Change Order will be issued. Change Orders will only be considered if they are based on materially different work conditions that could not have been expected from available information at the time the original purchase order was issued. Verbal authorizations for a Change Order must be followed up with a written Change Order as soon as possible.

24. Security.

Agencies will include their security requirements, if any, on each purchase order that they issue. Some Agencies require that the Contractor and its employees entering their facilities possess a current photo identification card or no entry will be allowed. Some secure facilities require that all vehicles entering and leaving the facility be searched. The Contractor and its employees shall note that introducing contraband upon the grounds of such secure facilities is a violation of State Law and could result in prosecution.

25. Removed Items and Clean-Up.

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon completion of the work, the Contractor shall remove and legally dispose of waste materials, rubbish, the Contractor's tools, equipment, machinery, and surplus materials from and about the project premises and surrounding area daily. The cost of cleanup performed by the ordering entity as a result of the Contractor's failure to provide the cleanup required by this solicitation shall be deducted at the actual cost to the State from the Contract sum.

When removal and disposal of non-hazardous debris is performed on a job site, receipt for disposal and manifest documentation must be included with the final invoice.

26. Submittals.

Contractor must submit all documents as required by the contract. Documents required to be submitted include, but are not limited to:

- Minnesota Department of Revenue online "Contractor Affidavit" form or paper IC134 form as required by the Compliance with Tax Laws Requirement clause in Exhibit A of the Contract. Email the State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance form as required by the Contract to the address listed on the purchase order.

Exhibit A, Supplement 1

MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY PREVAILING WAGES FOR STATE FUNDED CONSTRUCTION PROJECTS

The commercial prevailing wage rates for 87 Minnesota counties are detailed in Exhibit A - Supplement 1, which is attached and incorporated herein. These rates will apply for the term of the awarded contracts.

Exhibit A, Supplement 2

FIRST-TIER SUBCONTRACTORS LIST

THIS FORM MUST BE COMPLETED PRIOR TO CONTRACT EXECUTION

**Vehicle Lifts and Garage Associated Equipment through
NASPO ValuePoint Contract No. CW7258 for Vehicle Lifts and Garage Associated Equipment**

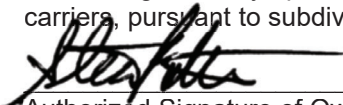
FIRST TIER SUBCONTRACTOR NAMES (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located	% of value of Contract	*Is the First Tier Subcontractor a TG/ED/VO?
Upward Hoist Installers LLC	New Ulm, MN	10%	NO

Attach additional sheets as needed for submission of all first-tier subcontractors.

*TG/ED/ VO = Certified Targeted Group Business, Economically Disadvantaged Business, and Veteran-Owned Business

I certify by signing this form under oath that I am an owner or officer of the company, and that:

All first-tier subcontractors listed above have verified through a signed statement under oath by an owner or officer that they meet the minimum criteria to be a responsible contractor as defined in **Minn. Stat. § 16C.285**. A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers, pursuant to subdivision 3, clause (7).



 Authorized Signature of Owner or Officer

Steve Perlstein
 Print Name

 President
 Title

Mohawk Lifts LLC
 Company Name

09/12/2023
 Date

