

**CONTRACT BETWEEN THE COUNTY OF DAKOTA  
AND DOWNS GOVERNMENT AFFAIRS, LLC  
FOR FEDERAL GOVERNMENTAL RELATIONS SERVICES**

Contract Period: January 1, 2023 – December 31, 2024

This Contract is entered into between Dakota County, 1590 Highway 55, Hastings, MN 55033, by and through the Dakota County Board of Commissioners, hereinafter “County” and Downs Government Affairs, LLC, 1629 K Street, NW, Suite 300, Washington, DC 20006, hereinafter “Contractor.”

WHEREAS, the County requires assistance in furthering the federal legislative priorities of Dakota County; and

WHEREAS, Contractor desires to and is capable of providing the necessary services according to the terms and conditions stated herein.

NOW, THEREFORE, in consideration of their mutual promises and obligations the parties agree as follows:

1. TERM. The term of this Contract shall be from January 1, 2023, to and including December 31, 2024, unless earlier terminated by law or according to the provisions herein.

2. CONTRACTOR'S OBLIGATIONS.

2.1 General Description. Contractor will provide a governmental relations team in Washington DC to represent the County’s interest in two specific priority capital investment projects to be identified by the Dakota County Board of Commissions. The services shall include:

- a. Attending meetings to support those projects as necessary; and
- b. Working with Congressional Delegation to engage support for Dakota community project requests; and
- c. Presenting at board meetings when necessary to support the priority projects; and
- d. Monthly check-in on community projects.

Contractor will keep the County Manager or his designee fully informed of the governmental relations activity and consult with the County Manager or his designee concerning the services performed at his request.

2.2 Legislative Positions. The Contractor chooses the means and manner of performing the services, it being understood, however, that the final approval of all formal positions on legislative matters shall be made by the County.

2.3 Service Providers and Lead. Contractor’s employee, Tom Downs, will be the Contractor’s team lead for the services provided to the County. Additional employees of contractor will provide services as determined by the team lead, however the team lead is responsible for coordinating the services and for communications with the County.

2.4 Reports/Evaluations. Contractor will provide reports and updates as the County may from time to time reasonably require concerning the priority capital investment projects and other federal legislative opportunities that may further the interests of Dakota County.

3. PAYMENT.

3.1 Total Cost. For the services provided by the Contractor during the two-year term of this Contract, the County will pay Contractor a total of Ninety Thousand Dollars (\$90,000.00), to be paid in twenty-four (24) equal installments of Three Thousand Three Hundred Thirty Three and 33/100 Dollars (\$3,750,00).

3.2 Compensation. The Total Cost detailed in Section 3.1 of this Agreement includes any out of pocket expenses Contractor may incur to perform the services required by this Contract.

3.3 Invoices. Contractor shall, within fifteen (15) working days following the last day of each month in which services were provided, submit an invoice and request for payment on an invoice form acceptable to the County.

3.4 Time of Payment. The County shall make payment to Contractor within thirty (30) days of the date on which the invoice is received.

If the invoice is incorrect, defective, or otherwise improper, the County will notify Contractor within ten (10) days of receiving the incorrect invoice. Upon receiving the corrected invoice from Contractor, the County will make payment within thirty (30) days.

3.5 Payment for Unauthorized Claims. The County may refuse to pay any claim that is not specifically authorized by this Contract. Payment of a claim shall not preclude the County from questioning the propriety of the claim.

If the County withholds payment for failure to provide services or failure to comply with any of the provisions of this Contract, no interest penalty shall accrue against the County.

4. COMPLIANCE WITH LAWS/STANDARDS.

4.1 General. Contractor shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations that relate to the services provided under this Contract. This includes, but is not limited to all Standard Assurances, which are attached as Exhibit 1 and incorporated by reference.

4.2 Violations. Any violation of such laws, statutes, ordinances, rules, or regulations by Contractor shall constitute a material breach of this Contract, and shall entitle the County to terminate this Contract upon delivery of written notice of termination to Contractor. Notwithstanding any other provision of this Contract, such termination shall be effective as of the date of such notice.

5. INDEPENDENT CONTRACTOR STATUS. Contractor is an independent contractor with respect to any services performed under this Contract. Contractor is free to exercise initiative, judgment and discretion on how to best perform the services.

Contractor acknowledges and agrees that Contractor and its employees and agents are not entitled to receive any of the benefits received by County employees and are not eligible for workers' or unemployment compensation benefits through the County. Contractor also acknowledges and agrees that no withholding or deduction for state or federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Contractor and that it is Contractor's sole obligation to comply with the applicable provisions of all federal and state tax laws.

6. INDEMNIFICATION. Any claims that arise or may arise on behalf of Contractor, its agents, employees or subcontractors as a consequence of any act or omission on the part of Contractor or its agents, employees or subcontractors while engaged in the performance of the contract shall in no way be the obligation or responsibility of the County. Contractor shall indemnify, hold harmless and defend the County, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the County, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any negligent or willful act or omission of Contractor, its agents, employees or subcontractors in the performance or failure to adequately perform Contractor's obligations pursuant to this Contract.

7. INSURANCE.

7.1 General Terms. To protect itself and the County under the indemnity provisions herein Contractor shall, at Contractor's expense, procure and maintain policies of insurance during the term of this Contract as provided in Exhibit 2. Such insurance shall apply to the extent of but not as a limitation upon or in satisfaction of the indemnity provisions herein. All retentions and deductibles under such policies of insurance shall be paid by Contractor.

7.2 Failure to Provide Proof of Insurance. The County may withhold payments for failure of Contractor to furnish proof of insurance coverage or to comply with the insurance requirements as stated above.

8. SUBCONTRACTING/SUCCESSORS. Except as indicated in its written proposal to provide services to the County, Contractor shall not enter into any subcontract for the performance of the services contemplated under this Contract nor assign any interest in the Contract without prior consent of the County and subject to such conditions and provisions as are deemed necessary. The Contractor is responsible for the timely and adequate performance of its subcontractors.

9. FORCE MAJEURE. Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

10. TERMINATION.

10.1 With or Without Cause. This Contract may be terminated with or without cause, by either party upon thirty (30) days' written notice.

10.2 Termination for Cause. In addition to other specific terms of this Contract or as otherwise provided by law, the following conditions, shall be a default justifying termination of this Contract for cause unless excused or corrected in a timely manner:

- A. Making material misrepresentations regarding the attached exhibits or in any other material provision or condition relied upon in the making of this Contract;
- B. Failure to provide services or payments required by this Contract in a professional manner to the detriment of the other party;
- C. Failure to perform any other material provision of this Contract;
- D. Failure to diligently administer the work so as to endanger performance of the terms of this Contract.

10.3 Delivery of Notice/Effective Date. Notice of Termination shall be made by certified mail or personal delivery to the authorized agent of the party. Notice is deemed effective upon delivery of the Notice of Termination to the address of the party as stated in paragraph 12.2.

10.4 Non-Appropriation. Notwithstanding any provision of this Contract to the contrary, this Contract may be terminated by either party in the event sufficient funds from the County, State, Federal or other sources are not appropriated, obtained and continued at least the level relied on for the performance of this Contract and the non-appropriation of funds did not result from any act of bad faith on the part of the County.

10.5 Duties of Contractor upon Termination. Upon delivery of the Notice of Termination, and except as otherwise provided, Contractor shall:

- A. Discontinue providing services under this Contract on the date and to the extent specified in the Notice of Termination;
- B. Complete performance of any services not cancelled by the Notice of Termination;
- C. Return all County property in its possession within seven (7) days to the extent that it relates to the performance of services cancelled by the Notice of Termination;
- D. Submit an invoice for services completed prior to the effective date of termination within thirty (30) days of receipt of the Notice of Termination;
- E. Maintain all records relating to the performance of the contract as may be required by the County or State law.

10.6 Duties of County upon Termination. Upon delivery of the Notice of Termination, and except as otherwise provided, the County:

A. Shall make final payment within thirty (30) days for any expenses not already paid pursuant to paragraph 3.

B. Shall not be liable for the cost of any services provided after Notice of Termination, except as authorized by the County in writing.

10.7 Effect of Termination. Termination of this Contract shall not discharge any liability, responsibility or right of either party which arises from the performance of or failure to adequately perform the terms of this Contract prior to the effective date of termination.

11. CONTRACT RIGHTS/REMEDIES.

11.1 Rights Cumulative. All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

11.2 Waiver. Waiver for any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to modify the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the County and Contractor.

12. LIAISON/NOTIFICATION.

12.1 Liaison. To assist the parties in the day-to-day performance of this Contract and to develop service, ensure compliance and provide ongoing consultation, a liaison shall be designated by Contractor and the County. The parties shall keep each other continually informed, in writing, of any change in the designated liaison.

12.2 Notification. Notification required to be provided pursuant to this Contract shall be provided to the following named persons and addresses unless otherwise stated in this Contract, or in a modification of this Contract:

To Contractor:

Tom Downs  
Downs Government Affairs, LLC  
1629 K Street, NW, Suite 300  
Washington, DC 20006  
(202) 403-2302

To the County:

Matt Smith, County Manager  
Dakota County Administration Center  
1590 Highway 55  
Hastings, MN 55033  
(651) 438-4418

13. CONFLICT OF INTEREST. Contractor agrees that it will not contract for or accept employment for the performance of any work or services with any individual, business, partnership, corporation, government, governmental unit, or any other organization that would create a conflict of interest in the performance of its obligations under this Contract. At all times during the term of this Contract, Contractor shall comply with its internal conflict of interest policies.

If the County determines that the Contractor has a conflict of interest with regard to positions taken or legislation pursued by other clients and Contractor does not withdraw the conflicting issue, the Contractor must withdraw from representation of the County and the other client on that particular issue. The County may make arrangements for alternative governmental relations services on the issue giving rise to the conflict and, upon request, the Contractor will assist the County in securing such services.

If the Contractor must withdraw from representing the County on an issue due to an unresolved conflict of interest, the Contractor and County will renegotiate the terms of this agreement to account for the withdrawal by the Contractor.

14. MODIFICATIONS. Any alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, signed by authorized representatives of the County and Contractor.

15. SEVERABILITY. The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.

16. MERGER.

16.1 Final Agreement. This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

16.2 Exhibits. Exhibits 1 and 2 are attached and incorporated herein by reference.

Exhibit 1 - Standard Assurances

Exhibit 2 - Insurance Terms

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Contract on the dates indicated below:

Approved as to form:

**COUNTY OF DAKOTA**

\_\_\_\_\_  
Assistant County Attorney/Date

By \_\_\_\_\_

Matt Smith

County Manager

Date of Signature \_\_\_\_\_

Approved by Dakota County Board  
Resolution No. \_\_\_\_\_

**DOWNNS GOVERNMENT AFFAIRS LLC**

*(I represent and warrant that I am authorized  
by law to execute this contract and legally bind  
the Contractor).*

By \_\_\_\_\_

Title \_\_\_\_\_

Date of Signature \_\_\_\_\_

## EXHIBIT 1

### STANDARD ASSURANCES

1. **NON-DISCRIMINATION**. During the performance of this Contract, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status or public assistance status. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without unlawful discrimination because of their race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status or public assistance status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices which set forth the provisions of this nondiscrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status or public assistance status.

No funds received under this Contract shall be used to provide religious or sectarian training or services.

The Contractor shall comply with any applicable federal or state law regarding non-discrimination. The following list includes, but is not meant to limit, laws which may be applicable:

A. The Equal Employment Opportunity Act of 1972, as amended, 42 U.S.C. § 2000e *et seq.* which prohibits discrimination in employment because of race, color, religion, sex or national origin.

B. Executive Order 11246, as amended, which is incorporated herein by reference, and prohibits discrimination by U.S. Government contractors and subcontractors because of race, color, religion, sex or national origin.

C. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.* and 45 C.F.R. 84.3 (J) and (K) implementing Sec. 504 of the Act which prohibits discrimination against qualified handicapped persons in the access to or participation in federally-funded services or employment.

D. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* as amended, and Minn. Stat. § 181.81, which generally prohibit discrimination because of age.

E. The Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d), which provides that an employer may not discriminate on the basis of sex by paying employees of different sexes differently for the same work.

F. Minn. Stat. Ch. 363A, as amended, which generally prohibits discrimination because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age.

G. Minn. Stat. § 181.59 which prohibits discrimination against any person by reason of race, creed, or color in any state or political subdivision contract for materials, supplies or construction. Violation of this section is a misdemeanor and any second or subsequent violation of these terms may be cause for forfeiture of all sums due under the Contract.

H. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, 47 U.S.C. §§ 225, 611, with regulations at 29 C.F.R. § 1630, which prohibits discrimination against qualified individuals on the basis of a disability in term, condition or privilege of employment.

I. Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, with regulations at 41 C.F.R. Part 60-250, which prohibits discrimination in employment against protected veterans.

2. **DATA PRIVACY**. For purposes of this Contract all data created, collected, received, stored, used, maintained, or disseminated by Contractor in the performance of this Contract is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as any applicable Federal laws on data privacy. Contractor must comply with the applicable data management requirements as if it were a governmental entity. The remedies in Minn. Stat. section 13.08 apply to the Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the governmental agency (County), except as required by the terms of this Contract. All subcontracts shall contain the same or similar data practices compliance requirements.

3. **HEALTH DATA PRIVACY**. The Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) when applicable to the Contractor's duties under this Contract. When applicable, Contractor agrees to comply with the HIPAA and HITECH Privacy requirements, Standards for Electronic Transactions, Security requirements, and any other applicable health data laws, rules, standards and requirements in effect during the term of this Agreement.



4. **RECORDS DISCLOSURE/RETENTION.** Contractor's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription and audit by the County and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. The Contractor agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

5. **WORKER HEALTH, SAFETY AND TRAINING.** Contractor shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subcontractors and other persons who may perform work in connection with this Contract. Contractor shall ensure all personnel of Contractor and subcontractors are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Contract. Each Contractor shall comply with federal, state and local occupational safety and health standards, regulations and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Contractor.

6. **CONTRACTOR DEBARMENT, SUSPENSION AND RESPONSIBILITY CERTIFICATION.** Federal Regulation 45 CFR 92.35 prohibits the State/Agency from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minnesota Statutes, Section 16C.03, subd. 2 provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to contract with the State/Agency. Vendors may be suspended or debarred when it is determined, through a duly authorized hearing process, that they have abused the public trust in a serious manner.

By Signing This Contract, The Contractor Certifies That It And Its Principals\* And Employees:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and

B. Have not within a three-year period preceding this Contract: 1) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract; 2) violated any federal or state antitrust statutes; or 3) committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and

C. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for: 1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction; 2) violating any federal or state antitrust statutes; or 3) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and

D. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Contract are in violation of any of the certifications set forth above.

E. Shall immediately give written notice to the Contracting Officer should Contractor come under investigation for allegations of fraud or a criminal offense in connection with obtaining, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

\*"Principals" for the purposes of this certification means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager; plant manager; head of a subsidiary, division, or business segment and similar positions).

Directions for On Line Access to Excluded Providers

To ensure compliance with this regulation, identification of excluded entities and individuals can be found on the Office of Inspector General (OIG) website at <https://exclusions.oig.hhs.gov/default.aspx>

## INSURANCE TERMS

Contractor agrees to provide and maintain at all times during the term of this Contract such insurance coverages as are indicated herein and to otherwise comply with the provisions that follow. Such policy(ies) of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the Contract indemnity provisions. The provisions of this section shall also apply to all Subcontractors, Sub-subcontractors, and Independent Contractors engaged by Contractor with respect to this Contract, and Contractor shall be entirely responsible for securing the compliance of all such persons or parties with these provisions.

### APPLICABLE SECTIONS ARE CHECKED

☒ 1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than \$500,000. If Contractor is not required by Statute to carry Workers' Compensation Insurance, Contractor agrees: (1) to provide County with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Contractor from the requirement of obtaining Workers' Compensation Insurance; (2) to provide prior notice to County of any change in Contractor's exemption status under Minn. Stat. § 176.041; and (3) to hold harmless and indemnify County from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for Workers' Compensation or Employers' Liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain Workers' Compensation Insurance, Contractor agrees to promptly provide County with evidence of such insurance coverage.

☒ 2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Contract), Independent Contractors, "XC&U" and Products-Completed Operations liability (if applicable). Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. An Insurance Services Office "Comprehensive General Liability" policy which includes a Broad Form Endorsement GL 0404 (Insurance Services Office designation) shall be considered to be an acceptable equivalent policy form.

Contractor agrees to maintain at all times during the period of this Contract a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

Such Commercial General Liability policy and Umbrella or Excess Liability policy (or policies) may provide aggregate limits for some or all of the coverages afforded thereunder, so long as such aggregate limits have not, as of the beginning of the term or at any time during the term, been reduced to less than the total required limits stated above, and further, that the Umbrella or Excess Liability policy provides coverage from the point that such aggregate limits in the underlying Commercial General Liability policy become reduced or exhausted. An Umbrella or Excess Liability policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention for each occurrence does not exceed the amount shown in the provision below.

Contractor's liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Contractor to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed \$25,000 each occurrence.

☒ Such policy(ies) shall name Dakota County, its officers, employees and agents as Additional Insureds thereunder.

☒ 3. Professional Liability. Professional Liability (errors and omissions) insurance with respect to its professional activities to be performed under this Contract. This amount of insurance shall be at least \$1,500,000 per occurrence and aggregate (if applicable). Coverage under such policy may be subject to a deductible, not to exceed \$25,000 per occurrence. Contractor agrees to maintain such insurance for at least one (1) year from Contract termination.

It is understood that such Professional Liability insurance may be provided on a claims-made basis, and, in such case, that changes in insurers or insurance policy forms could result in the impairment of the liability insurance protection intended for Dakota County hereunder. Contractor therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability insurance coverage if such impairment of Dakota County's protection could result; and further, that it will exercise its rights under any "Extended Reporting Period" ("tail coverage") or similar policy option if necessary or appropriate to avoid impairment of Dakota County's protection. Contractor further agrees that it will, throughout the one (1) year period of required coverage, immediately: (a) advise Dakota County of any intended or pending change of any Professional Liability insurers or policy forms, and provide Dakota County with all pertinent information that Dakota County may reasonably request to determine compliance with this section; and (b) immediately advise Dakota County of any claims or threats of claims that might reasonably be expected to reduce the amount of such insurance remaining available for the protection of Dakota County.

☒ 4. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Contract. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least \$1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy. **Unless included within the scope of Contractor's Commercial General Liability policy, such Business Automobile Liability policy shall also include coverage for motor vehicle liability assumed under this contract.**

☐ Such policy, and, if applicable, such Umbrella or Excess Liability policy(ies), shall include Dakota County, its officers, employees and agents as Additional Insureds thereunder.

☒ 5. Additional Insurance. Dakota County shall, at any time during the period of the Contract, have the right to require that Contractor secure any additional insurance, or additional feature to existing insurance, as Dakota County may reasonably require for the protection of their interests or those of the public. In such event Contractor shall proceed with due diligence to make every good faith effort to promptly comply with such additional requirement(s).

☒ 6. Evidence of Insurance. Contractor shall promptly provide Dakota County with evidence that the insurance coverage required hereunder is in full force and effect prior to commencement of any work. At least 10 days prior to termination of any such coverage, Contractor shall provide Dakota County with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of the Dakota County Certificate of Insurance, or in such other form as Dakota County may reasonably request, and shall contain sufficient information to allow Dakota County to determine whether there is compliance with these provisions. At the request of Dakota County, Contractor shall, in addition to providing such evidence of insurance, promptly furnish Contract Manager with a complete (and if so required, insurer-certified) copy of each insurance policy intended to provide coverage required hereunder. All such policies shall be endorsed to require that the insurer provide at least 30 days' notice to Dakota County prior to the effective date of policy cancellation, nonrenewal, or material adverse change in coverage terms. On the Certificate of Insurance, Contractor's insurance agency shall certify that he/she has Error and Omissions coverage.

☒ 7. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financially responsible insurers licensed to do business in the State of Minnesota, and all such insurers must be acceptable to Dakota County. Such acceptance by Dakota County shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable. In all other instances, Dakota County shall have 15 business days from the date of receipt of Contractor's evidence of insurance to advise Contractor in writing of any insurer that is not acceptable to Dakota County. If Dakota County does not respond in writing within such 15 day period, Contractor's insurer(s) shall be deemed to be acceptable to Dakota County.

☒ 8. Noncompliance. In the event of the failure of Contractor to maintain such insurance and/or to furnish satisfactory evidence thereof as required herein, Dakota County shall have the right to purchase such insurance on behalf of Contractor, which agrees to provide all necessary and appropriate information therefor and to pay the cost thereof to Dakota County immediately upon presentation of invoice.

☒ 9. Loss Information. At the request of Dakota County, Contractor shall promptly furnish loss information concerning all liability claims brought against Contractor (or any other insured under Contractor's required policies), that may affect the amount of liability insurance available for the benefit and protection of Dakota County under this section. Such loss information shall include such specifics and be in such form as Dakota County may reasonably require.

☒ 10. Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Contractor. Contractor hereby releases Dakota County, its officers, employees, agents, and others acting on their behalf, from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of Dakota County or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

Contractor agrees to effect such revision of any property insurance policy as may be necessary in order to permit the release and waiver of subrogation agreed to herein. Contractor shall, upon the request of Dakota County, promptly provide a Certificate of Insurance, or other form of evidence as may be reasonably requested by Dakota County, evidencing that the full waiver of subrogation privilege contemplated by this provision is present; and/or, if so requested by Dakota County, Contractor shall provide a full and complete copy of the pertinent property insurance policy(ies).

K/CM/Exh/Insure-Prof-Liability-CM.doc  
Revised: 10/07