



WRIGHT COUNTY, MINNESOTA

PROFESSIONAL SERVICES CONTRACT

This Contract is made this ____ day of May, 2021 (the "Effective Date"), by and between WRIGHT COUNTY, a political subdivision of the State of Minnesota, 10 2nd St. NW, Buffalo, MN 55313, ("COUNTY"), and AUROMIRA ARCHITECTS LLC, a limited liability company under the laws of the State of Minnesota, 13754 Frontier Court, Suite 101 Burnsville, MN 55337, ("ARCHITECT"), (collectively the "PARTIES").

WHEREAS, COUNTY requires certain professional services in conjunction with the architectural design of the COUNTY's dental care facility to be constructed within its new Government Center building (the "Project"), and solicited proposals from qualified architectural firms through a Solicitation of Professional Services dated March 30, 2021 and thereafter issued Addenda 1-4 thereto; and

WHEREAS, ARCHITECT responded to COUNTY's Solicitation of Professional Services by submitting a proposal dated April 19, 2021 and agrees to furnish the various professional services required by COUNTY pursuant to this Contract.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the PARTIES agree as follows:

SECTION I – ARCHITECT'S SERVICES AND RESPONSIBILITIES

- A. **Scope of Services.** ARCHITECT agrees to perform the professional services as detailed in Exhibit 1, Scope of Services, attached hereto and incorporated herein by reference.
- B. **Changes to Scope of Services/Additional Services.** Upon mutual agreement of the PARTIES hereto pursuant to the contract amendment procedures in the Standard Terms and Conditions attached hereto as Exhibit 3, a change to the scope of services detailed in Exhibit 1, attached hereto, may be authorized. In the event that such a change to the scope of services detailed in Exhibit 1, attached hereto, requires additional services by ARCHITECT, ARCHITECT shall be entitled to additional compensation consistent with the requirements of the Standard Conditions attached hereto as Exhibit 3.
- C. **Standard of Care.** Services provided by ARCHITECT or its subcontractors and/or sub-consultants under this Contract will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of ARCHITECT's profession or industry with experience in projects of similar size, scope and complexity. ARCHITECT shall be

liable to the fullest extent permitted under applicable law, without limitation, for any injuries, loss, or damages proximately caused by ARCHITECT's breach of this standard of care. ARCHITECT shall put forth reasonable efforts to complete its duties in a timely manner generally consistent with the project schedule attached hereto as Exhibit 2, as the same may be adjusted in coordination with COUNTY's Project Administrator. ARCHITECT shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Contract. ARCHITECT shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.

SECTION II – CONSIDERATION

- A. **Fees.** COUNTY will compensate ARCHITECT as detailed in Exhibit 3, Compensation, which is attached hereto and incorporated herein by reference, for ARCHITECT's performance of services under this Contract.
- B. **Payments.** If COUNTY fails to make any payment due ARCHITECT for services performed to the satisfaction of the COUNTY's Project Administrator and expenses within thirty days after the date of ARCHITECT's invoice, ARCHITECT may, after giving seven days written notice to COUNTY, and without waiving any claim or right against COUNTY and without incurring liability whatsoever to COUNTY, suspend services and withhold project deliverables due under this Contract until ARCHITECT has been paid in full all amounts due for services, expenses and charges.

SECTION III – TERM AND TERMINATION

- A. **Term.** This Contract shall be in effect beginning on the Effective Date until such time as the Project is completed, or such earlier termination of this Contract as provided for herein.
- B. **Termination.** This Contract may be terminated as provided in the Standard Terms and Conditions attached hereto as Exhibit 4.

SECTION IV – TERMS AND CONDITIONS

- A. **Standard Terms and Conditions.** ARCHITECT's services performed pursuant to this Contract shall be subject to the COUNTY's Standard Terms and Conditions, attached hereto as Exhibit 4 and incorporated by reference as though fully set forth herein. In the event of any inconsistency between the Standard Terms and Conditions and the body of this Contract, the provisions in the body of this Contract shall prevail.
- B. **Special Terms and Conditions.** ARCHITECT's services performed pursuant to this Contract shall additionally be subject to the Special Terms and Conditions, attached hereto as Exhibit 5 and incorporated by reference as though fully set forth herein. In the event of any inconsistency between the Special Terms and Conditions and the body of this Contract, the provisions in the body of this Contract shall prevail.

- C. **Default.** If ARCHITECT fails to satisfy any of the provisions of this Contract, or so fails to perform and/or administer the services detailed in Exhibit 1, attached hereto, pursuant to the requirements of Section I of this Contract, in such a manner as to endanger the performance of the Contract or the services provided hereunder, this shall constitute default. Unless ARCHITECT's default is excused by COUNTY, COUNTY may, upon written notice, immediately cancel this Contract or exercise any other rights or remedies available to COUNTY under this Contract or law. In the event of ARCHITECT's default, ARCHITECT shall be liable to COUNTY for any and all costs, disbursements, attorneys and consultant fees reasonably incurred by COUNTY in enforcing this Contract.

SECTION V – ADDITIONAL TERMS

- A. **Voluntary and Knowing Action.** The PARTIES, by executing this Contract, state that they have carefully read this Contract and understand fully the contents hereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound hereby.
- B. **Notices.** All notices and other communications required or permitted under this Contract shall be in writing, and hand delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, or by overnight delivery service and shall be effective upon receipt at the following addresses or as either PARTY shall have notified the other PARTY. The PARTIES' representatives for notification for all purposes are:

COUNTY:

Elizabeth Karels _____
Project Administrator _____
Government Center _____
10 2nd St. NW _____
Buffalo, MN 55313 _____
Phone: (763) 684-8604 _____
Email: Elizabeth.Karels@co.wright.mn.us _____

ARCHITECT:

Mythili Thiagarajan AIA _____
Principal _____
13754 Frontier Court, Suite 101 _____
Burnsville, MN 55337 _____
Phone: (651) 319-9220 _____
Email: mythili@auomiraarchitects.com _____

- C. **Acceptance of Deliverables.** Each deliverable shall be subject to a verification of acceptability by COUNTY to ensure such deliverable satisfies stated requirements. The acceptability of any deliverable will be based on COUNTY's satisfaction or non-satisfaction with the deliverable based on requirements of this Contract. If any deliverable is not acceptable, COUNTY will notify ARCHITECT specifying reasons in reasonable detail, and ARCHITECT will, at no additional cost, conform the deliverable to stated requirements of this Contract.

- D. **Data Disclosure.** Under Minn. Stat. § 270C.65, Subd. 3 and other applicable law, ARCHITECT consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to COUNTY, to federal and state agencies and state personnel involved in the payment of COUNTY obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring ARCHITECT to file state tax returns, pay delinquent state tax liabilities, if any, or pay other COUNTY liabilities.
- E. **Patented Devices, Materials and Processes.** If this Contract requires, or ARCHITECT desires, the use of any design, device, material or process covered by letters, patent or copyright, trademark or trade name, ARCHITECT shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with COUNTY. If no such agreement is made or filed as noted, ARCHITECT shall indemnify and hold harmless COUNTY from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the Contract, and shall indemnify and defend COUNTY for any costs, liability, expenses and attorney's fees that result from any such infringement.
- F. **Mechanic's Liens.** ARCHITECT hereby covenants and agrees that ARCHITECT will not permit or allow any mechanic's or materialman's liens to be placed on COUNTY's interest in the Property that is the subject of the Project during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on COUNTY's interest, ARCHITECT shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that ARCHITECT may contest any such lien provided ARCHITECT first posts a surety bond, in favor of and insuring COUNTY, in an amount equal to 125% of the amount of any such lien.
- G. **Entire Contract.** These terms and conditions, inclusive of the Exhibits attached hereto, constitute the entire Contract between the PARTIES regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
- H. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the Contract or any provision hereof.
- I. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any PARTY or PARTIES, and any undischarged obligations of COUNTY and ARCHITECT arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
- J. **Execution.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any PARTY to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing PARTY.

Remainder of page intentionally left blank.

SECTION VII –SIGNATURES

IN WITNESS WHEREOF, the PARTIES have hereunto executed this document the day and year first above written.

ARCHITECT: AUROMIRA ARCHITECTS LLC

By: _____
(Signature)
Title: _____
Print Name: _____

Date: _____

By: _____
(Signature)
Title: _____
Print Name: _____

Date: _____

WRIGHT COUNTY:

By: _____
_____, Its Board Chair

Date: _____

By: _____
_____, Its Administrator

Date: _____

EXHIBIT 1

SCOPE OF SERVICES

Subject to the terms of this Contract, ARCHITECT shall perform the following services:

Kickoff meeting

The first step is the kickoff meeting with the stakeholders to discuss basic parameters and design goals for the project. The kickoff meeting is envisioned as an in-person meeting.

Pre-Design

Upon project initiation, the ARCHITECT will:

- Meet with project stakeholders to finalize project requirements. This may include touring existing dental clinics providing services to Medicaid and low-income patients. Community Dental Care.
- Prepare a pre-design report as outlined in the Pre-Design Manual for Capital Projects: https://mn.gov/admin/assets/RECS-CS-Predesign-Manual--6th-Edition_tcm36-208484.pdf. The County will submit the report to the state of Minnesota for approval.
- Develop project cost estimate and project schedule for the completion of the project.
- Work with County staff to obtain approval of pre-design from the County Board.
- Provide support to the County during the state's review and approval of the pre-design report.
- The pre-design phase shall include the following meetings:
 - 1 site visit for field verification
 - 1 tour/meeting to visit similar clinics
 - 2 in-person or virtual meetings in consultation with stakeholders.

Schematic Design

Once the pre-design report has been approved, the ARCHITECT will:

- Prepare schematic design of the project, including schematic design plans drawn to scale and with critical dimensions showing each aspect of the project.
- Develop project cost estimate and project schedule for the completion of the project.
- Work with County staff to obtain approval of schematic design from the County Board.
- Attend meetings with the County, dental clinic provider, County Board or other project stakeholders as needed for a successful completion of schematic design.
- The schematic design phase shall include the following meetings:
 - 2 in-person or virtual meetings in consultation with the stakeholders.

Design Development

After approval of schematic design, the ARCHITECT will:

- Work with project stakeholders and dental clinic provider to finalize design requirements.
- Prepare detailed design documents, including plans, sections, elevations, typical construction details, material selection, mechanical, electrical, and plumbing systems, equipment and other final design elements.
- Work with County staff to obtain approval of design development documents from the County Board.
- Attend meetings with the County, dental clinic provider, County Board or other project stakeholders as needed for a successful completion of design development.

- The design development phase shall include the following meetings:
 - 2 in-person or virtual meetings in consultation with the stakeholders and dental clinic provider.

Construction Documents

After approval of the design development documents, the ARCHITECT will:

- Complete finalized plans, specifications, and other documents needed for bidding.
- In coordination with County staff, prepare the construction contract between the County and the general contractor on an appropriate AIA Form contract.
- Develop construction cost estimate and project schedule.
- Work with County staff to obtain approval of construction documents from the County Board.
- Attend meetings with the County, dental clinic provider, County Board or other project stakeholders as needed for a successful completion of construction documents.
- The construction documents phase shall include the following meetings:
 - 1 in-person or virtual meeting as required by the stakeholders and dental clinic provider.

Bidding Phase

Once the construction documents have been completed, the ARCHITECT will:

- Respond to bidder's questions and draft addenda as needed.
- Assist in review of contractor bids and provide recommendation to the County for award of the construction contract.
- Attend meetings with the County, dental clinic provider, County Board or other project stakeholders as needed for a successful completion of the bidding phase.
- The bidding phase shall include the following meetings:
 - 1 site visit to answer questions during bidders' walk-through
 - 1 in-person or virtual meeting

Construction Administration and Project Closeout

Once the bidding phase is complete and the construction contract awarded, the ARCHITECT will:

- Attend pre-construction and project job meetings.
- Provide construction oversight, including observations to assure that the work, including the construction, is completed pursuant to the plans, specifications, other contract documents and laws.
- Prepare responses to requests for information, submittals, sketches, architectural supplemental instructions, and change order requests.
- Prepare field reports identifying general observations and construction related issues.
- Coordinate as necessary the activities of commissioning agents used during the project.
- Assist the County in resolving any punch-list items prior to the completion of the project.
- Review the as-built drawings and close-out documents for conformance to the contract documents.
- Develop as-built drawings for the County's records.
- The construction administration and project closeout phase shall include the following meetings:
 - 5 site visits
 - 1 site visit- final walk-through
 - Up to 3 virtual meetings

EXHIBIT 2
PROJECT SCHEDULE

Schedule on following page



Proposed Project Schedule - 4/19/2021

Year	2021					2022								
	Month	May	June	July	August	September	October	November	December	January				
Week	1	2	3	4	5	1	2	3	4	5	1	2	3	4
Project meetings and tasks														
Stakeholders (See Note-1)		◆ Tour of sites												
Wright County Board Review			◆											
Design team meetings and tasks														
Field Verification		◆ Site visit												
Predesign														
Cost estimating														
Schematic design														
Design development														
100% Construction documents														
Bidding														
Construction and Commissioning (See Note-2)														
Project closeout/as built														

Note-1: See the methodology section of the proposal for estimated number of meetings in each design phase
 Note-2: Construction contract to be signed by end of September 2021 for construction completion by end of December 2021

EXHIBIT 3

COMPENSATION

Subject to the limitations set forth in this Exhibit, COUNTY will compensate ARCHITECT in accordance with the schedule of fees below for the time spent in performance of services under this Contract, provided that under no circumstances shall ARCHITECT's total charges to COUNTY, including expenses, exceed \$84,500.00 ("maximum price"), unless such charges in excess of the maximum price are authorized through the procedures set forth in the Standard Terms and Conditions attached hereto as Exhibit 4 before they are incurred by COUNTY.

Notwithstanding the above, ARCHITECT may be requested to provide specified technology services as Additional Services upon written authorization from the COUNTY's Project Administrator in a not to exceed amount of \$4,500.00.

COUNTY will make periodic payment to ARCHITECT upon billing at intervals not more often than monthly at the rates specified in the schedule of fees included herein, provided that no bill/invoice submitted to COUNTY shall exceed a percentage of the maximum price equivalent to the percentage of the scope of services completed by ARCHITECT to the satisfaction of the Project Administrator, as determined by COUNTY.

COUNTY shall be entitled to withhold five percent (5%) of the maximum price until such time as ARCHITECT has fully performed the scope of services detailed in Exhibit 1 to the satisfaction of the Project Administrator.

Remainder of page intentionally left blank.

Schedule of Fees

Hourly Rates for Auomira Architects Personnel

Principal Architect.....	\$140.00
Project Manager.....	\$130.00
Project Architect.....	\$105.00
Interior Designer.....	\$105.00
Designer.....	\$65.00

Hourly Rates for IMEG Personnel

Client Executive/Market Director.....	\$250
Project Executive.....	\$225
Senior Engineer Technical Specialist.....	\$210
Senior Engineer III.....	\$200
Senior engineer II.....	\$185
Senior Engineer.....	\$160
Project Engineer.....	\$130
Engineer.....	\$120
Senior Designer Technical Specialist.....	\$190
Senior Designer III.....	\$180
Senior Designer II.....	\$165
Senior Designer.....	\$150
Project Designer II.....	\$140
Project Designer.....	\$130
Designer IV.....	\$120
Designer III.....	\$115
Designer II.....	\$110
Designer.....	\$100
Senior Medical Equipment Planner.....	\$195
Medical Equipment Planner.....	\$140
Sr. Commissioning Authority/Engineer.....	\$185
Project Commissioning Authority/Engineer.....	\$140
Commissioning Authority/Engineer.....	\$120
Senior Construction Administrator.....	\$155
Construction Administrator.....	\$125
Senior Virtual Design Coordinator.....	\$105
Virtual Design Coordinator.....	\$100
Virtual Design Technician.....	\$85
Administrative Assistant.....	\$75

EXHIBIT 4

STANDARD TERMS AND CONDITIONS

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION:

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of submittal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the offeror fails to provide recommended information, the County may, at its sole option, ask the offeror to provide the information or evaluate the submittal without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions shall apply:

- A. **County** – Wright County, Minnesota,
- B. **Agency or User Department** – Used interchangeably to mean the County department or division responsible for managing the professional services contract for the project.
- C. **Consultant or Firm** – Used interchangeably in referring to the architect, engineer, geologist, landscape architect, or land surveyor organization offering professional services to the County.
- D. **Evaluation Committee** – The committee established to formally evaluate proposals according to the evaluation criteria listed herein.
- E. **Joint Venture** – Two or more persons or entities combining their property, money, skills, and knowledge to form a distinct legal entity to carry out a single business enterprise for profit, pursuant to a written agreement.
- F. **Contract** - The legal agreement executed between the County and the Consultant/Firm.
- G. **County Project Manager** - The County employee specifically designated as responsible for monitoring and overseeing the Consultant's performance under this Contract. Also referred to as County Designated Contract Representative.
- H. **Administration Department** - The contracting authority for the County authorized to sign contracts and amendments thereto on behalf of the County.

2. **NOTICE TO PROCEED:** The Consultant agrees to render professional services promptly and diligently upon receipt of written notice to proceed with any or all of the services set forth herein.

3. **RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The County may, at reasonable times and places, audit the books and records of Consultant or any and all of Consultant's sub-consultants. Said audit shall be limited to this Contract and its scope of services.

4. **PRINCIPAL CONSULTANT'S RESPONSIBILITY:** The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this Contract. The Consultant shall without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. Additionally, when modification to a construction contract is required because of an error or deficiency in the services provided under this Professional Design Services Contract, the County shall consider the extent to which the Consultant may be reasonably liable.

Neither the County's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the County in accordance with applicable law for all damages to the County caused by the Consultant's negligent performance of any of the services furnished under this Contract.

If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

The Consultant agrees that the work to be performed pursuant to this agreement shall be under the full authority and responsible charge of the undersigned principal of the firm or officer of the corporation who must be the holder of a current Minnesota Certificate of Registration issued by the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and interior Design, for the practice of professional design services in the State of Minnesota. Any drawings, plans, specifications, and estimates to be prepared pursuant to this agreement shall be prepared by or under the personal direction of the undersigned qualified holder of a Minnesota Certificate of Registration issued by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design.

The Consultant shall be responsible for the completeness and accuracy of all services rendered and correction of all errors of omission or commission on the drawings, specifications, and other documents notwithstanding prior approval by the County.

By signing the Contract, the Consultant affirms that it has the ordinary skill, knowledge, and judgment possessed by members of its profession, and that it will use reasonable and ordinary care and diligence in performing the work.

5. ADDITIONAL COMPENSATION:

The Consultant shall submit a written proposal to the County's Designated Representative and secure the County's written approval of same prior to the performance by the Consultant of any work for which additional compensation will be requested.

Without the prior written approval of the proposed work and the fee therefor, the County will not consider payment of any sums other than those already set forth under this Contract.

6. EXCLUSIVE POSSESSION: All work of authorship, including but not limited to calculations, designs, drawings, specifications, graphics, text, and all copyrightable works resulting from this Contract shall become property of the County. Additionally, all services, information, computer program elements, reports, plans, specifications, and other deliverables, which may be created under this Contract, are the sole property of the County. Property of the County shall not be used or released by the Consultant or any other person except with prior written permission by the County.

7. DRAWING, STANDARD DETAILS, ETC.: All final documents shall be prepared by such methods and of such quality of workmanship as will permit the making of satisfactory reproductions.

8. ADVICE AND CONSULTATION: The Consultant shall be available to the County for advice and consultation on the interpretation of the plans and specifications on questions, which may arise during the course of this Contract.

9. PUBLIC HEARINGS: The Consultant shall upon request, attend any public hearing on matters related to the scope of professional services set forth in this Contract.

10. TIME RECORDS: The Consultant shall maintain complete, current and daily records covering all hours actually worked on this project by the various classes of workers. The County shall have the right to audit and/or examine such records at any time during the progress of this Contract and shall withhold payment if such documentation is found by the County to be incomplete or erroneous.

11. CERTIFICATION: By signature in the offer section of the Offer page, Consultant certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.

- B. The Consultant shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.
- C. The Consultant has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
- D. The Consultant submitting the offer hereby certifies that the individual signing the offer is an authorized agent for the Consultant and has the authority to bind the Consultant to the Contract.

12. TERMINATION OF CONTRACT: Unless otherwise specifically provided herein, this contract may be terminated at any time by mutual written consent, or by the County, with or without cause, upon giving **thirty (30) days** written notice to you. The County at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the County before the effective date of termination.

- A. The County may terminate this Contract in whole or, from time to time, in part, for the County's convenience or because of
- B. the failure of the Consultant to fulfill the Contract obligations. Upon receipt of the notice of termination, the Consultant shall:
 - 1) immediately discontinue all services affected (unless the notice directs otherwise), and 2) deliver to the Administration Department all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Contract, whether completed or in process.
- C. If the termination is for the convenience of the County, the County shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.
- D. If the termination is for failure of the Consultant to fulfill the contract obligations, the County may complete the work by contract or otherwise, and the Consultant shall be liable for any additional cost incurred by the County.
- E. If, after termination for failure to fulfill contract obligations, it is determined that the Consultant has not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.
- F. The rights and remedies of the County provided in this clause are in addition to any other rights or remedies provided by law or under this Contract.
- G. Each payment obligation of the County created hereby is conditioned upon the availability of County, State and Federal funds, which are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the County and available for the continuance of service herein contemplated, the contract period for the service may be terminated by the County at the end of the period for which funds are available. The County shall notify consultant at the earliest possible time which service will or may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

13. SUSPENSION OF WORK:

- A. The County may order the Consultant, in writing, to suspend, delay, or interrupt all or any part of the work under this Contract
- B. for the period of time that the County determines appropriate for the convenience of the County.
- C. The Consultant agrees that no charges or claims for damages shall be made against the County for any delays or hindrances during the progress of this Contract. Such delays or hindrances, if any will be covered by an extension of time for such reasonable period as mutually agreed upon between the parties. It is agreed and understood, however, that permission to proceed with the Contract after the established completion date, shall not be construed as a waiver by the County of any of the rights herein.

14. INDEPENDENT CONSULTANT: It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Consultant shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the County, and that such days do not accumulate for the use of same at a later date. The County will not provide any insurance coverage to Consultant, including Worker's Compensation coverage. The Consultant is advised that taxes or social security payments shall not be withheld from a County payment issued hereunder and that Consultant should make arrangements to directly pay such expenses, if any.

15. NON-EXCLUSIVE CONTRACT: Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the County. The County reserves the right to obtain like goods or services from another source when necessary.

16. Compliance with the law. (A.) Consultant agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12101-12213) (ADA), the Minnesota Human Rights Act (Minn. Stat. Ch. 363A) and Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e).

(B). Consultant will comply with the provisions of Minnesota Statutes § 181.59 which require:

Every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which Consultant agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason or race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) that a violation of this section is a misdemeanor; and (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

These laws deal with discrimination based on race, gender, disability, religion and with sexual harassment. In the event Consultant has questions concerning these requirements, it should request necessary clarifications from the County. Violation of any of the above laws can lead to termination of this Contract.

17. CONFIDENTIALITY OF RECORDS: For purposes of this Agreement all data created, collected, received, stored, used, maintained, or disseminated by Vendor in the performance of this Agreement 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 the Federal laws on data privacy. If Vendor is performing a governmental function as defined in Minn. Stat. Section 13.05, Subd. 11 as part of its contract duties, it must comply with those requirements as if it were a governmental entity. The remedies in Minn. Stat. Section 13.08 apply to the Vendor. Vendor does not have a duty to provide access to public data to the public if the public data are available from the County, except as required by the terms of this Agreement. All subcontracts shall contain the same or similar data practices compliance requirements.

18. GRATUITIES: The County may, by written notice to the Consultant, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant, to any officer or employee of the County amending. In the event this Contract is canceled by the County pursuant to this provision, the County shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant the amount of the

gratuity.

- 19. APPLICABLE LAW:** This Contract shall be governed by the law of the State of Minnesota, and suits pertaining to this Contract shall be brought only in Federal or State courts in the State of Minnesota, County of Wright.
- 20. CONTRACT:** The Final Contract document shall be written and shall be based upon the RFP and/or the Request for Proposal issued by the County, the offer submitted by the Consultant in response to the RFP and/or the Request for Proposal, and any negotiations entered into and changes agreed upon by both parties. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP and/or the Request for Proposal. The County reserves the right to clarify any contractual terms with the concurrence of the Consultant; however, any substantial non-conformity in the offer, as determined by the County shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the County and the Consultant relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
- 21. CONTRACT AMENDMENTS:** This Contract shall be modified only by a written contract amendment approved and signed by the County Board of Commissioners.
- 22. PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.
- 23. SEVERABILITY:** The provisions of this Contract are severable in the sole discretion of the County, to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract, which may remain in effect without the invalid provision, or application.
- 24. INTERPRETATION - PAROL EVIDENCE:** This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.
- 25. ASSIGNMENT – DELEGATION:** No right or interest in this Contract shall be assignable in whole or in part without the written consent of the parties hereto, and no delegation of any duty of Consultant shall be made without prior written permission of the County's Administration Department. This Contract and all of the terms, conditions and provisions herein, shall extend to and be binding upon the heirs, administrators, executors, successors, and assigns of the parties hereto. The County shall not unreasonably withhold approval of assignment/delegation and shall notify the Consultant of the County's position within fifteen (15) days of receipt of written notice by the Consultant.
- 26. SUBCONTRACTS:** No subcontract shall be entered into by the Consultant with any other party to furnish any of the material/service specified herein without the advance written approval of the County's Administration Department. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the sub-consultant were the Consultant referred to herein. The Consultant is responsible for contract performance whether or not sub-consultants are used. The County shall not unreasonably withhold approval and shall notify the Consultant of the County's position within 15 days of receipt of written notice by the Consultant.
- 27. RIGHTS AND REMEDIES:** No provision in this document or in the Consultant's response shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or

services, obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

28. ACKNOWLEDGMENTS: Consultant acknowledges that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the County, shall not alter or affect the obligations of the Consultant or the rights of the County under the foregoing warranties. Additional warranty requirements may be set forth in this document.

29. INDEMNIFICATION: To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Wright County, a body politic and corporate of the State of Minnesota, its board members, officers, employees, agents and other officials (hereafter called "County") from and against all claims, damages, losses and expenses, including reasonable attorneys' fees and court costs but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Consultant or other persons employed or used by Consultant in the performance of the contract or subcontract.

30. RIGHT TO ASSURANCE: Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation with this Contract.

31. RIGHT TO INSPECT: The County may, at reasonable times, and at the County's expense, inspect the place of a Consultant or sub-consultant, which is related to the performance of any contract as awarded or to be awarded.

32. WORK SCHEDULE: The consultant shall adhere to any and all work schedules developed under this contract.

The work schedule will provide for the completion of services within a specified number of consecutive calendar days following the starting date established by a written notice to proceed. If the Consultant is unable to adhere to the accepted schedule, they shall prepare a justification letter with a proposed revised schedule and submit the same to the County for review and approval. It shall be the sole option of the County to approve any such requests. The County shall be furnished two (2) copies of the original work schedule and two (2) copies after each revision, if any, is approved.

33. FORCE MAJEURE:

A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a sub-consultant unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

B. If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

34. INSPECTION & ACCEPTANCE: All material or service is subject to final inspection and acceptance by the County. Material or service failing to conform to the specifications of this Contract shall be held at Consultant's risk and may be returned to the Consultant. If so returned, all costs are the responsibility of the Consultant. Noncompliance shall conform to the cancellation clause set forth in this document.

35. PAYMENT: When submitting invoices for payment, vendors are to include the applicable Purchase Order number on the invoice. The invoice should not be submitted until you have supplied the materials and/or

services covered by the purchase order bearing the same number. If the vendor is unable to fulfill all of the purchase order, submit an invoice for the portion of the order supplied, or service completed. Once the backordered/uncompleted portion of the purchase order is shipped/completed, a new invoice is required. Vendors are requested to submit invoice(s) within 30 days of delivery and/or date of service.

The County shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.

- 36. BUSINESS LICENSES AND PERMITS:** Consultant shall maintain in current status all Federal, State, and local registrations, licenses and permits required for the operation of the business conducted by the Consultant as applicable to this Contract.
- 37. PROJECT LICENSES AND PERMITS:** Consultant shall ensure that all licenses and permits, applicable to the work as specified herein, are maintained and current.
- 38. COST OF PROPOSAL PREPARATION:** The County shall not reimburse the cost of developing, presenting, or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically providing adequate information in a straightforward and concise manner.
- 39. PUBLIC RECORD:** All proposals submitted in response to this request shall become the property of the County and shall become a matter of public record available for review subsequent to the award notification. Any information or materials deemed proprietary must be specifically designated as such and may be maintained as a confidential record in the discretion of the County.
- 40. SUBSEQUENT EMPLOYMENT:** The County may cancel this Contract without penalty or further obligation pursuant if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the County is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a Consultant to any other party to this Contract with respect to the subject matter of the Contract. Such cancellation shall be effective when written notice from the Administration Department is received by the parties to this Contract, unless the notice specifies a later time.
- 41. PROJECT COMPLIANCE:** **It is the Consultant's sole responsibility to ensure that they comply with all applicable Federal, State and Local regulations.** At a minimum, the project shall be designed to comply with all applicable Federal, State and Local regulations and any amendments thereto which are adopted during the life of this Contract. Therefore, the Consultant should be aware that any of the following may apply to this project. Compliance with these is required and it shall be the responsibility of the Consultant to alert the County of any deviation from this requirement.
- 42. MAINTENANCE OF RECORDS:** Pursuant to Minn. Stat. § 16C.05, Subd. 5, Contractor agrees to provide the County, the State Auditor, or any authorized representatives of either, access to and the right to examine, audit, excerpt and transcribe any books, documents or other records pertinent to this project. Contractor further agrees to maintain these records for a period of six years from the completion of this project.

EXHIBIT 5

SPECIAL TERMS AND CONDITIONS

1. **SOFTWARE COMPATABILITY:** For the purposes of aiding the Consultant in the performance of their obligation under this Contract, the County shall furnish upon request all relevant data in the County's possession and shall direct County officers, agents and employees to render all reasonable assistance to Consultant in connection with Consultants performance under this Contract. The provision of such aid, assistance, information or services as received from the County shall in no way relieve the Consultant from obligations under this Contract. The County does not warrant the compatibility of County furnished data, either electronic or in any form, with the Consultant's software. All costs associated with data conversion or software upgrades and conversions shall be borne by the Consultant.

2. **INSURANCE PROVISIONS:**

A. COVERAGE

COVERAGE AFFORDED

MINIMUM LIMITS OF LIABILITY

Workers' Compensation

Employer's Liability Coverage with minimum limits of
 Bodily injury by Accident: \$500,000 each accident
 Bodily Injury by Disease \$500,000 each employee
 Bodily Injury by Disease \$500,000 policy limit

Commercial General Liability

\$1,500,000 each occurrence
 \$3,000,000 general aggregate
 \$3,000,000 Products and completed operations
 general aggregate

Automobile Liability Insurance
 single limit to include any vehicle

\$1,500,000 combined

Professional Liability

\$2,000,000 each occurrence
 \$4,000,000 aggregate

B. INSURANCE CONDITIONS

1. **GENERAL CONDITIONS:** The Contractor agrees to, at its own expense, purchase and maintain at all times during the life of this contract the herein stipulated minimum insurance with companies duly licensed, possessing a minimum current A.M. Best, Inc. Rating of A- FSC VIII, or approved unlicensed companies in the State of Minnesota with policies and forms satisfactory to Wright County. All policies will contain an endorsement providing that written notice be given to the County at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.
2. **WAIVER OF SUBROGATION OR TRANSFER OF RIGHTS OF RECOVERY:** The policies required herein, except Professional Liability, shall contain a waiver of subrogation or in the alternative, a waiver of transfer of rights of recovery against Wright County, its agents, representatives, officers, directors, officials and employees for any claims arising out of the Contractor's work or service.
3. **ADDITIONAL INSURED:** The insurance policies required by this Contract, except Workers' Compensation and Professional Liability, shall name Wright County, its agents, representatives, officers, directors, officials and employees as Additional Insured with a CG 20 10 or similar endorsement. The Contractor agrees that the insurance required herein will be primary and

that any insurance carried by the County will be excess and not contributing. All insurance policies of the Contractor shall be primary in relation to the Additional Insured.

- 4. ENDORSEMENTS AND CERTIFICATE:** The following provisions are also required for the insurance(s), and evidence of such shall be satisfied by Certificate(s) and Endorsements. An insurance company authorized to transact business in the State of Minnesota shall issue the Certificates. The Contractor shall, within ten (10) days after award of bid, furnish the County with Certificates of Insurance for the required insurance coverage. Endorsements for the Waiver of Transfer of Rights and Additional Insured shall be provided as indicated above, unless contained within the basic policy(ies) and then confirmed by written statement signed by the insurance agent, broker and/or underwriter in a form acceptable to the County.

"Wright County, a body politic and corporate of the State of Minnesota, its Board members, officers, employees, agents, and other officials" shall be listed as the certificate holder. If room does not permit, this verbiage can be entered into the description of operations. However, if the latter method is used, **the certificate holder shall be listed only as Wright County, Minnesota, Attn: Risk Management, 10 2nd Street NW Buffalo MN.**

- 5. SUBCONTRACTORS:** In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.
- 6. PROFESSIONAL LIABILITY (Errors & Omissions):** Professional liability insurance carried by the consultant must cover all elements of the project including professional services performed by subcontractors. If the consultant's professional liability insurance does not provided coverage for work performed by subcontractors, separate project insurance will be required to comply with the professional liability insurance requirement. The County may require a copy of the professional liability insurance policy to verify coverage.

The vendor agrees to defend, indemnify and hold Wright County, its employees and officials harmless from any claims, demands, actions or causes of action, including reasonable attorney's fees and expenses arising out of any act or omission on the part of the vendor, or its subcontractors, partners or independent contractors or any of their agents or employees in the performance of or with relation to any of the work or services to be performed or furnished by the vendor or the subcontractors, partners, or independent contractors or any of their agents or employees under the agreement.

When a self-insured retention (SIR) or deductible exceeds **\$25,000**, Wright County reserves the right, but not the obligation, to review and request a copy of Contractor's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Contractor agrees to maintain a Retroactive Date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced; or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, Contractor agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Contractor of the obligation to provide replacement coverage.

- 3. OTHER CONTRACTS:** The County may, as its sole option, enter into Contracts for additional work related to this project. The Consultant shall fully cooperate with other Consultants and consultants and with County employees to accommodate such other work. The Consultant shall not commit or permit any act that interferes with the performance of such work by other Consultants.
- 4. COMPENSATION AND METHOD OF PAYMENT:** In consideration of the performance of the services described in the Scope of Services, the County shall pay the Consultant in accordance with the negotiated contract rates, and the Consultant shall charge the County only in accordance with those same rates.

The County will pay the Consultant following the submission of itemized invoice(s). Each itemized invoice must bear a written certification by an authorized County representative confirming the services for which payment is requested.

5. **CONFLICT OF INTEREST:** Sub-consultants who design and/or develop specifications for materials for this project will be precluded from contract award for that item if a solicitation is issued for the item.
6. **SOLICITATION AMENDMENTS:** Amendments may be obtained from the Wright County website at: www.co.wright.mn.us It is the Offeror's responsibility to obtain a copy of any amendment relevant to this solicitation. Interested parties may obtain a copy of this solicitation by calling **(763) 682-7378**, or a copy may be picked up during regular business hours at the Wright County Administration 10 2nd Street NW Buffalo MN 55313. The County takes no responsibility for informing recipients of changes to the original solicitation document. Failure to submit signed solicitation amendments with the sealed submittal may be grounds for deeming the submittal non-responsive.
7. **OWNERSHIP OF WORK:** The originals of all documents provided to the Consultant by the County for review and all work product of the Consultant including, without limitation, field review notes, field survey notes, reports, exhibits, computer outputs, calculation sheets, drawings, and all other documents, including recordings, videos and pictures associated herewith are instruments of service, are property of the County, and are to be delivered to the County before or as a part of completion of the performance under any phase of this contract for which compensation and/or payment is requested by the Consultant. Any work produced under this contract is a work made for hire. Each discovery, idea, invention, or other work product developed by the Consultant pursuant to this Agreement (collectively 'Work Product') shall belong to the County. To the extent applicable law provides that any Work Product belongs to the Consultant rather than the County notwithstanding the preceding sentence, the Consultant assigns to the County all rights, title, and interest in and to such Work Product for no consideration other than that which is given in connection with this Agreement. The Consultant must promptly (1) provide the County with all information in the possession or under the control of the Consultant and relating to all Work Product and (2) at the request of the County, execute and deliver to the County each document and other writing, and take each other action, in order to assist the County in protecting its interest in any Work Product and otherwise enabling the County to use and enjoy any Work Product.