Admin Form 908-02 (7/00)

Contract Specialist: **Sherry Van Horn**

CONSULTANT SUPPLEMENTAL AGREEMENT/CONTRACT AMENDMENT FOR STATE OF MINNESOTA PROFESSIONAL AND TECHNICAL SERVICES MASTER CONTRACT

PROJECT NAME: Testing and Inspection Services
LOCATION: Various in MN

CONSULTANT: Independent Testing Technologies, Inc.
ADDRESS: 337 31st Ave. South
Waite Park, MN 56387

To Be Completed by State

Business Unit	Accounting Date	Fund	DeptID		AppropID	Category 81101508 93151600	Account 411308 411324	Amount
Vendor Number 0000215377			Contract Number 23034(previously MAPS No. 442712)	PC BU		Project Number		Activity
Date 10.17.11		Order Number N/A			Line Number	Entered By		Control Number 47799
[Individual signing certifies that funds have been encumbered as required by Minnesota Statute §§16A.15 AND 16C.05]								
Contract Begin Date: **1/20/2010**		Current Est'd Expiration Date: **12/31/2011**			Revised Est'd Expiration Date: **12/31/2012**			

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SUPPLEMENTAL AGREEMENT/CONTRACT AMENDMENT NO. # 1

This SUPPLEMENTAL AGREEMENT/CONTRACT AMENDMENT is made by and between the STATE of MINNESOTA, acting through its Commissioner of Administration, "STATE," and, Independent Testing Technologies, Inc., 337 31st Ave. South, Waite Park, MN 56387, "CONSULTANT."

WHEREAS, STATE and CONSULTANT have entered into a contract, known as Department of Administration Contract No. 23034 (previously MAPS No. 442712) for Testing and Inspection Services Master Contract; which was fully executed on January 20, 2010.

WHEREAS,

1. The original contract called for testing and inspection services.

2. It is necessary to modify the original contract to include the following modifications:
   a. Paragraph 1.3 provides for an expiration date of December 31, 2011. Contract expiration date shall be revised to December 31, 2012.
   b. Contract clauses shall be modified and/or added to the contract as identified in this Supplemental Agreement.

NOW THEREFORE, it is mutually agreed to amend Contract No. 23034 (previously MAPS No. 442712) as follows:

1. Contract expiration date shall be revised to December 31, 2012.

2. Paragraph **1.3** language determining expiration date of this contract shall be changed to December 31, 2012.

3. Paragraph **1.4** ***Survival of Terms*** – "8. Liability" shall be changed to "8. Indemnification"

4. Paragraph **4.2 Payment (A)** shall be deleted and replaced with the following:

   (A) Invoices. The State will promptly pay the Consultant after the Consultant presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

   Monthly for work completed. Invoice shall be submitted on State's "CONSULTANT Pay Request" form. A copy of the form is available on the Web at www.admin.state.mn.us/recs.

5. Paragraph **8. Liability** shall be deleted and replaced with the following:

   8. Indemnification
   In the performance of this contract by Contractor, or Contractor's agents or employees, the contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the state, to the extent caused by Contractor's:
   1) Intentional, willful, or negligent acts or omissions; or
   2) Actions that give rise to strict liability; or
   3) Breach of contract or warranty.

   The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this contract.

6. Paragraph **10.1 Government Data Practices** shall be deleted and replaced with the following:
   10.1 ***Government Data Practices***. The Consultant and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time)as it applies to all data provided by the State under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Consultant under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 by either the Consultant or the State.

   If the Consultant receives a request to release the data referred to in this Clause, the Consultant must immediately notify the State. The State will give the Consultant instructions concerning the release of the data to the requesting party before the data is released.

7. The following clauses are added to the contract:

21. Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions
Contractor certifies that neither it nor its principles is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the contract award was based. Contractor shall provide immediate written notice to the State's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

22. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the contract award was based.

23. Insurance: See Insurance Requirements, which are attached and incorporated herein.

Except as amended herein, the terms and conditions of the Original Contract and all previous amendments remain in full force and effect.

IN WITNESS WHEREOF, STATE has caused this Supplemental Agreement/Contract Amendment to be duly executed on its behalf and CONSULTANT has caused the same to be duly executed on its behalf.

This Supplemental Agreement/Contract Amendment may be executed in counterpart; once all parties have signed on one or separate copies, a copy signed by one party is binding on that party same as if signed by all remaining parties.

1. STATE ENCUMBRANCE VERIFICATION
Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

SWIFT Order Number:	N/A
Certification Signature:	
Date:	10.17.11

2. CONSULTANT: Independent Testing Technologies, Inc.
CONSULTANT certifies that the appropriate person(s) have executed the Agreement on behalf of the CONSULTANT as required by applicable articles, by-laws, resolutions, or ordinances.

By:	(Corporate Signature)
Printed Name:	Daryl J. Dhein
Title:	President
Date:	10/6/11

By:	(Corporate Signature)
Printed Name:	
Title:	
Date:	

3. STATE AGENCY: Department of Administration
Contract approval and certification that state funds have been encumbered as required by Minnesota Statutes §§ 16A.15 and 16C.05.

By:	(Authorized Signature)
Printed Name: Asst. Director or Director	
Title: Director	
Date:	10/17/11

4. COMMISSIONER OF ADMINISTRATION, as delegated to Materials Management Division:

By: (Authorized Signature)	
Date:	Oct. 31, 2011

Distribution:
- Agency – Original (fully executed) Contract
- Department of Administration
- Contractor
- State Authorized Representative

Exhibit D1

State/Consultant Basic Services
Insurance Requirements

A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

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

1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

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

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

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

2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

   $2,000,000 – per occurrence
   $2,000,000 – annual aggregate
   $2,000,000 – annual aggregate – Products/Completed Operations

   The following coverages shall be included:

   Premises and Operations Bodily Injury and Property Damage
   Personal and Advertising Injury
   Blanket Contractual Liability
   Products and Completed Operations Liability
   Other; if applicable, please list_____
   State of Minnesota named as an Additional Insured

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

Exhibit D1

$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance**

   This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract.

   Contractor is required to carry the following **minimum** limits:

   $2,000,000 – per claim or event
   $2,000,000 – annual aggregate

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

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

C. Additional Insurance Conditions:
   - Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
   - Contractor's policy(ies) and Certificate(s) of Insurance shall contain a provision that coverage afforded under the policy(ies) shall not be cancelled without at least thirty (30) days advanced written notice to the State of Minnesota;
   - Contractor is responsible for payment of Contract related insurance premiums and deductibles;
   - If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
   - Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
   - Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
   - An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.