



MINNESOTA STATE

INCOME CONTRACT

This contract is by and between City of Marshall, 344 W Main Street, Marshall, MN 56258 (hereinafter PURCHASER) and the State of Minnesota acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Southwest Minnesota State University (hereinafter MINNESOTA STATE).

WHEREAS, the PURCHASER has a need for a specific service; and

WHEREAS, MINNESOTA STATE, is empowered to enter into income contracts pursuant to Minnesota Statutes, Chapter 136F;

NOW, THEREFORE, it is agreed:

1. **DUTIES OF MINNESOTA STATE.** The MINNESOTA STATE agrees to provide the following:
 - a. Provide use of two (2) pairs of “dark fiber” cable (fiber) on the SMSU campus. Specifically, the fiber is located between the SMSU “Phone Room” located at AC 105A and the SMSU Data Center located at BA 181.
 - b. Provide use of “server rack space” in the SMSU Data Center located in BA 181
 - c. SMSU warrants that it will provide best effort to keep the Data Center in operational status in support of the City equipment on a 24 x 7 and 365 day/year basis. Operational status will generally include electrical and cooling services.
 - i. To help meet this objective, SMSU will maintain redundant electrical power via a generator to support Data Center operations in the time of planned and unplanned electrical outages on the SMSU campus.
 - ii. To help meet this objective, SMSU will provide redundant cooling systems for the Data Center.
 - iii. To help meet this objective, SMSU will strive to ensure that the Data Center is secure and off-limits to non-authorized personnel.
 - iv. SMSU shall provide 7 days notification to the City of any planned interruption of Data Center services that may require the Data Center to be offline.
 - v. SMSU shall provide 30days notification of any significant changes to Data Center operations (e.g., new AC system installation).
 - vi. SMSU shall also make best effort to promptly notify the City of any issues (e.g., Cooling System issues) that may impact Data Center operations.

2. **DUTIES OF PURCHASER.** The PURCHASER agrees to provide the following:
- a. The City is responsible for providing and maintaining/updating the necessary optical equipment to make use of the fiber. The City is also responsible for providing and maintaining/updating equipment in the Phone Room to transmit signals to its off-campus locations.
 - b. The City shall have scheduled access during regular business days (8:00 a.m. – 5:00 p.m., Monday – Friday excepting holidays).
 - c. Requests for access on regular business days shall be made to Shawn Hedman. Requests to access the Data Center shall be made at least 24 hours ahead except in the case of an emergency need.
 - d. Any requests to access the Data Center during off hours for such activities as planned maintenance shall be made 7 Days in advance. Such off-hours access will need to be approved by Shawn Hedman.
 - e. Requests to access the Data Center during off hours for emergency needs should be directed to SMSU Public Safety.

3. **CONSIDERATION AND TERMS OF PAYMENT.**

- a. Consideration for all services performed and goods or materials supplied by MINNESOTA STATE pursuant to this contract shall be paid by the PURCHASER as follows: Fifteen thousand six hundred and 00/100 Dollars (\$15,600.00) for twenty four (24) months fiber usage. This is five hundred and 00/100 dollars (\$500.00) per month for data center usage (rack space) and one hundred fifty dollars and 00/100 dollars (\$150.00) per month for two (2) pairs of fiber. Payment to Minnesota State will be made on a quarterly basis, six hundred fifty and 00/100 dollars (\$650.00) per month at three (3) months for a quarterly payment of one thousand nine hundred fifty and 00/100 dollars (\$1,950.00) per quarter.
- b. Terms of Payment. Payment shall be made by the PURCHASER within 20 days of the of the end of each quarter, March 31, June 30, September 30, and December 31.

4. **TERM OF CONTRACT.** This contract shall be effective on July 1, 2021, or upon the date that the final required signature is obtained by MINNESOTA STATE, whichever occurs later, and shall remain in effect until June 30, 2023 or until all obligations set forth in this contract have been satisfactorily fulfilled, whichever occurs first. Payment of time from July 1, 2021 will be required even though contract signed after that point in time as server and fiber is in use.

5. **CANCELLATION.** This contract may be canceled by the PURCHASER or MINNESOTA STATE at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, the MINNESOTA STATE shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

6. **AUTHORIZED REPRESENTATIVES.**

a. The PURCHASER'S Authorized Representative for the purposes of administration of this contract is:

Name: Sharon Hanson
Title: City Administrator
Address: 344 West Main St. Marshall, MN 56258
Telephone: 507-537-6760
E-Mail: sharon.hanson@ci.marshall.mn.us

b. MINNESOTA STATE 'S Authorized Representatives for the purposes of administration of this contract is:

Name: Dan Baun	or	Deb Kerkaert
Title: Chief Information Officer		Vice President for Finance
Address: 1501 State Street Marshall MN 56258		same
Telephone: 507-537-6978		507-537-6093
E-Mail: dan.baun@smsu.edu		deb.kerkaert@smsu.edu

Each authorized representative shall have final authority for acceptance of services of the other party and shall have responsibility to ensure that all payments due to the other party are paid pursuant to the terms of this contract.

7. **ASSIGNMENT.** Neither the PURCHASER nor MINNESOTA STATE shall assign or transfer any rights or obligations under this contract without the prior written approval of the other party.

8. **LIABILITY.** The PURCHASER shall indemnify, save, and hold MINNESOTA STATE, its agents and employees harmless from any and all claims or causes of action arising from the performance of this contract by the PURCHASER or PURCHASER'S agents or employees. This clause shall not be construed to bar any legal remedies the PURCHASER

may have for MINNESOTA STATE 'S failure to fulfill its obligations pursuant to this contract.

9. **AMERICANS WITH DISABILITIES ACT COMPLIANCE (hereinafter "ADA").** The PURCHASER is responsible for complying with the Americans with Disabilities Act, 42 U. S. C. 12101, et. seq. and regulations promulgated pursuant to it. MINNESOTA STATE IS NOT responsible for issues or challenges related to compliance with the ADA beyond its own routine use of facilities, services, or other areas covered by the ADA.
10. **AMENDMENTS.** Any amendments to this contract shall be in writing and shall be executed by the same parties who executed the original contract or their successors in office.
11. **GOVERNMENT DATA PRACTICES ACT.** The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The PURCHASER and MINNESOTA STATE must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MINNESOTA STATE in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the PURCHASER in accordance with this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the PURCHASER or MINNESOTA STATE.

In the event the PURCHASER receives a request to release the data referred to in this clause, the PURCHASER must immediately notify MINNESOTA STATE. MINNESOTA STATE will give the PURCHASER instructions concerning the release of the data to the requesting party before the data is released.

JURISDICTION AND VENUE. This contract shall be governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this contract, or the breach thereof, shall be located only in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

12. **STATE AUDITS.** The books, records, documents, and accounting procedures and practices of the PURCHASER relevant to this contract shall be subject to examination by the contracting department and the Legislative Auditor.

13. INSURANCE.

13.1 **General Liability.** Purchaser shall acquire and maintain, at its sole expense, all the insurance described on **Exhibit A**, attached hereto and made a part of this Lease Agreement, naming both Minnesota State Colleges and Universities and Southwest Minnesota State University as additional insured.

13.2. **Property Damage.** It shall be the duty of MINNESOTA STATE and PURCHASER to maintain insurance on their own property, both real and personal. MINNESOTA STATE may maintain either insurance or self-insurance. Notwithstanding anything apparently to the contrary of this Lease Agreement, MINNESOTA STATE and PURCHASER hereby release one another and their respective partners, officers, employees and property manager from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for loss or damage covered by said insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

14. **OTHER PROVISIONS.** (Attach additional page(s) if necessary): None

The rest of this page intentionally left blank. Signature page to follow.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

APPROVED:

1. **MINNESOTA STATE COLLEGES AND UNIVERSITIES,**
Southwest Minnesota State University

By (authorized signature and printed name)
Title Vice President for Finance and Administration
Date

2. **PURCHASER:** City of Marshall
PURCHASER certifies that the appropriate person(s) have executed the contract on behalf of PURCHASER as required by applicable articles, by-laws, resolutions, or ordinances.

By (authorized signature and printed name)
Title
Date

By (authorized signature and printed name)
Title
Date

3. **AS TO FORM AND EXECUTION (SMSU):**

By (authorized signature and printed name)
Title Buyer 2 & Purchasing Clerk
Date

**EXHIBIT A
GENERAL INSURANCE REQUIREMENTS**

All policies shall remain in force and effect throughout the term of the Lease Agreement.

POLICY REQUIREMENTS

1. Workers' Compensation Insurance
 - A. Statutory Compensation Coverage
 - B. Coverage B – Employers Liability with limits of not less than:
 - \$100,000 Bodily Injury by Disease per Employee
 - \$500,000 Bodily Injury by Disease Aggregate
 - \$100,000 Bodily Injury by Accident
2. General Liability Insurance
 - A. Minimum Limits of Liability:
 - \$2,000,000 – Per Occurrence
 - \$2,000,000 – Annual Aggregate
 - \$2,000,000 – Annual Aggregate applying to Products/Completed Operations
 - B. Coverages:
 - Premises and Operations Bodily Injury and Property Damage
 - Personal & Advertising Injury
 - Blanket Contractual
 - Products and Completed Operations
 - Other; if applicable, please list _____
 - State of Minnesota or Minnesota State Colleges and Universities named as Additional Insured

Additional Insurance Conditions

- PURCHASER'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 the PURCHASER's performance under this Lease Agreement.
- PURCHASER agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless PURCHASER's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota
- PURCHASER is responsible for payment of Lease Agreement related insurance premiums and deductibles.
- If PURCHASER is self-insured, a Certification of Self-Insurance must be attached.
- PURCHASER's policy(ies) shall include legal defense fees in addition to the liability policy limits.
- PURCHASER shall obtain insurance policy(ies) from insurance company(ies) having an "AM Best" rating of A- (minus), Financial Size Category of VII or better, and authorized to do business in the State of Minnesota.
 - An Umbrella or Excess Liability insurance policy may be used to supplement the PURCHASER's policy limits to satisfy the full policy limits required by the Lease Agreement.