

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

**Minnesota State Colleges and Universities AIA Document A201–2017,
General Conditions of the Contract for Construction as currently amended
by the Owner (hereinafter referred to as "AIA Document A201-2017")**

**For Use with State of Minnesota, Minnesota State Colleges and Universities Agreement for
Design and Construction Services**

For the following PROJECT: (name and location or address)

(Name and location or address)

See Project Agreements and Attachment(s)

(Paragraph deleted)

**THE OWNER: State of Minnesota, action through its Board of Trustees of the Minnesota State
Colleges and Universities.**

(Name, legal status and address)

See Project Agreements and Attachment(s)

THE ARCHITECT:

(Name, legal status and address)

See Project Agreements and Attachment(s)

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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User Notes:

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(Paragraphs deleted)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is; (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with the requirements of the Contract Documents. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as

binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are; (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request was made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work has stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the

Agreement and is referred to throughout the Contract Documents as if singular in number. be read to Architect/Engineer or the

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor, whose status under the Contract Documents shall be that of the Architect. The Owner shall inform the Contractor of the name of the Architect and their designated representative.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. The Owner and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure from payments then or thereafter due the Contractor. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Owner's Use of the Project

The Owner shall have the right to take possession of and to use completed or partially completed portions of the Work even though the time of completing the entire Work or such portion thereof may not have expired, and such use shall not constitute acceptance thereof; provided, however, that the Owner will not interfere with the Contractor's work by the Owner's partial occupancy and the Owner will compensate the Contractor for reasonable additional time and costs associated with the Owner's partial occupancy.

§ 2.7 Owner's Right to Inspect and Reject Work

The Owner shall have the right to reject Work that does not conform to the Contract Documents and to require inspection and testing of the Work to the same extent as the Architect. Neither this right, nor the exercise or failure to exercise this right, shall give rise to any duty or responsibility on the part of the Owner to the Contractor, the Architect, or any other person or entity.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, as required, in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, the shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs the obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects

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to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or when negotiations are concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit, as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

(Paragraphs deleted)

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§ 3.7.4 If the Contractor encounters conditions at the site that are: (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. Additionally, Contractors shall comply with Minnesota Statute §307.08.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not be unreasonably withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the

Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§3.10.4 The Contractor is responsible to schedule Owner specified testing and inspections. A minimum of five (5) working days' notice is required prior to starting Work requiring testing or inspection. A minimum of three (3) working days' notice thereafter is required for continuation of Work items requiring testing or inspection. These notice times shall be incorporated into the Contractor's construction schedule.

§3.10.5 If the Contractor, Architect, or Owner determines at any time, and for any reason, that the work has fallen fifteen (15) calendar days or ten (10) working days, behind the scheduled contract time, milestone date, phased work completion date, critical path date, or work indicated on the latest submitted schedule, the Contractor shall submit a Recovery Schedule within seven (7) calendar days of the Architect's written request or date the Contractor has knowledge that the work has fallen behind. The Contractor shall also submit a Recovery Plan indicating actions to be taken to recover the schedule. The Recovery Plan shall document the following:

- .1 Description of work that is behind schedule
- .2 Reason for work being behind schedule. If the Contractor claims that the delay is due to an event or condition that was outside the Contractor's ability to control, the Contractor shall include all documentation sufficient to justify the delay in accordance with Sections 8.3.1, 8.3.2, and 8.3.3.
- .3 Identification of all resources necessary to recover the schedule including all materials, labor, equipment and changes in operations.
- .4 Detail of all additional resources necessary to recover the schedule including, but not limited to additional quantities of manpower, overtime, increased number of hours per day, increased number of work shifts per day, increased number of work days per week.
- .5 Duration of time necessary to recover the schedule.

The Contractor shall implement the Recovery Plan and recover the schedule at no cost to the owner and no additional contract time unless the claim is substantiated and approved in accordance with Section 8.3 and Article 15.

A breach and default of contract shall result from the Contractor's failure to provide the Architect and Owner with the Recovery Plan and Recovery Schedule and/or failure to implement the Recovery Plan.

Should the Contractor claim and provide sufficient documentation to substantiate that the delay was beyond the control of the Contractor the Owner shall reserve the right, in its best interest, to determine if the Recovery Plan and Schedule shall be implemented.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be evaluated.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has: (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will coordinate with construction, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The

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Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Board of Trustees of the Minnesota State Colleges and Universities and its officers and

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members, the Owner's Representative, the Owner's Representative's consultants, the Architect, the Architect's consultants, the State of Minnesota, officers and employees of the State of Minnesota, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom but only to the extent caused by the intentional or negligent acts or omissions of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any party or person described in this Section 3.18.

§ 3.18.1.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless the Owner, including but not limited to attorneys' fees, against any assertion of claims by Subcontractors, Sub-subcontractors, or material suppliers for payment for Work or materials for which the Owner has paid the Contractor, including but not limited to assertion of security interests.

§ 3.18.1.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel acceptable to the Owner) and hold harmless, the Owner from and against any and all administrative and judicial actions (including but not limited to reasonable attorney's fees related to any such actions) and judgments incurred by the Owner in connection with any labor-related activity arising from the Contractor's performance of the Work or compliance with the Contract. As used in the Contract Documents, "labor-related activity" includes, but is not limited to, strikes, walk outs, informational or organizational picketing, use of placards, distribution of hand outs, leaflets or other similar acts at or in the vicinity of the Project site or in the vicinity of any other facility where the Owner conducts business. The Owner shall advise the Contractor if any labor-related activity occurs and the Contractor shall arrange for the legal representation (with counsel acceptable to the Owner) necessary to protect the Owner's interest.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will represent the Owner:

- .1) During construction,
- .2) Until final Payment is due, and
- .3) With the Owner's concurrence from time to time during the one year period for correction of the Work described in Section 12.2.

Representation shall be consistent with duties, responsibilities in the General Conditions of the Contract for Construction (Minnesota State AIA Document A201-2017), as currently amended by the Owner, and Standard Form of Agreement Between Owner and Architect (Minnesota State AIA Document B101-2017 or AIA B133-2014) as currently amended by the Owner, during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

(Paragraphs deleted)

§ 5.3 Subcontractor Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:

- .1) assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or Architect's Supplemental Instruction order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or Architect's Supplemental Instruction order for a minor change in the Work.

§ 7.1.4 The Contract Sum and/or the Contract Time shall be adjusted only by Change Order. The signature of the Contractor on the Change Order binds the Contractor to all the terms thereof and reflects the Contractor's complete agreement therewith, including adjustment in the Contract Sum and/or the Contract Time. Subject to the right of the Contractor to disagree and assert a claim in accordance with Article 15, Change Orders may, at the Owner's sole discretion, be recorded without the Contractor's signature.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1) The change in the Work;
- .2) The amount of the adjustment, if any, in the Contract Sum; and
- .3) The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to, agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2) Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4) As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1) Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2) Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4) Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5) Costs of supervision and field office personnel directly attributable to the change. Costs of overhead and profit. Contractors and Subcontractors may add up to 10% overhead and profit on their direct cost and 5% overhead and profit on the direct cost of Subcontractors.
- .6) Contingency: In no event will any lump sum or percentage amount for "contingency" be allowed to be added as a separate line item in proposals and Change Order estimate. Unknowns attributed to labor hours will be accounted for when estimating labor hours anticipated to perform the Work. Unknowns attributed to material scrap and waste will be estimated as part of material costs.

§ 7.3.5 The documentation for the adjustment in the Contract Sum for the purposes of this Section 7.3.4.6 shall include the following:

- .1) Name of the Contractor and/or Subcontractor companies,
- .2) Name of the Project,
- .3) Description of the Work performed,
- .4) Breakdown of labor and material costs:
 - a. If labor exceeds \$1,000.00, the cost computation shall be shown, including the number of hours worked and the hourly rate applied.

- b. If material costs exceed \$1,000.00, the cost shall be shown by individual items or categories of items. If any individual item or category of items exceeds \$1,000.00, a copy of the material supplier's invoice shall be included.
- .5) Calculation of the amount of overhead and profit added, and
- .6) Signature of Contractor and/or Subcontractors.

§ 7.3.6 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.7 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.8 The signature of the Contractor on a Construction Change Directive binds the Contractor to all the terms thereof and reflects the Contractor's complete agreement therewith, including adjustment in Contract Sum and/or Contract Time. Such agreement shall be effective immediately and shall be recorded as part of a subsequent Change Order that shall, without delay, be signed by the Contractor.

§ 7.3.9 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.10 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment, but only when preceded by an executed Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect shall, pursuant to Section 7.3.6 make an interim determination for purposes of a Change Order to precede certification for payment for those costs subject to the right of the Contractor to disagree and assert a Claim in accordance with Article 15.

§ 7.3.11 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Owner and the Architect, with the consent of the Owner, have authority to order or authorize minor changes in the Work (also referred to as an Architect's Supplemental Instruction that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes will be effected by written order signed by the Architect and shall be binding on the Contractor. The Contractor shall promptly carry out such written orders. If the Contractor believes that such changes in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 Owner's Right to Perform Changes in the Work

If the Owner does not agree to the Contractor's proposal to perform changes in the Work, or if the Owner does not deem it advisable or expedient to proceed on the basis of the Contractor's proposal, the Owner reserves the right to perform changes in the Work with its own personnel or to employ others to perform changes in the Work.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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§ 8.1.2 The date of commencement of the Work is the date on which the Owner issues a written Notice to Proceed. If there is no written Notice to Proceed, the Date of Commencement of the Work is the date of the execution of the Contract by the Owner.

§ 8.1.3 The date(s) of Substantial Completion is/are the date(s) certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and the receipt of a written Notice to Proceed. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion(s) within the Contract Time. If the completion of the Project is substantially behind schedule and the Owner determines that the date(s) of Substantial Completion is (are) no longer achievable unless additional labor or overtime is used, the Contractor shall, upon direction of the Owner, provide such additional labor or overtime as may be necessary to bring the Project back on schedule; provided:

- .1) The Contractor shall not be entitled to an increase in the Contract Sum for overtime pay or other costs associated with such Work, and
- .2) Failure of the Owner to give such direction shall not relieve the Contractor from its obligations to perform the Work in accordance with schedules established in the Contract.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of a separate contractor employed by the Owner; or by Modifications in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. However, Change Orders for extensions of Contract Time will be considered only under the following conditions and only if the critical path of the most current Construction Schedule is adversely affected:

- .1) Only the conditions noted above, over which the Contractor has no control, will be considered. The burden of proof to substantiate the Change Order for an extension of Contract Time shall rest with the Contractor, including evidence that the cause was beyond the Contractor's control, or
- .2) A delay in the progress of the Work actually occurred as a result of one of the valid causes for Contract Time extension, or
- .3) Any unusual delay in delivery occurs solely due to delay in transportation beyond the Contractor's control. An extension of Contract Time will not be granted for delay in delivery where said delivery was not properly scheduled or when an order was not promptly and properly placed, or
- .4) With respect to a Change Order proposed for an extension of Contract Time as a result of climatic conditions, the parties shall consider the location of the Project site and the type of Work allegedly affected, and shall recognize only unusually severe variations from "average" conditions. Foul weather in itself will not be a valid reason for Contract Time extension. Requests for Contract Time extension because of delay resulting from weather extremes will only be considered for the overall Project based on a critical path Construction Schedule analysis, and will not be considered unless a substantial variation from seasonal weather conditions occurred for a significant period of Contract Time, and operations were necessarily affected to a significant degree when they would otherwise have been in progress. If the Contractor encounters unusually favorable weather subsequent to the issuance of a Contract Time extension for unusually unfavorable weather, then the Contractor shall cooperate with the Owner and the Architect to determine a Contract Time reduction based on the same type of analysis used in considering Contract Time extensions for unusually unfavorable weather, or

- .5) For changes in the Work which significantly affect the time and progress of the entire Work, and where the anticipated delay period can be reasonably calculated at the time the change is requested, any Contract Time extension shall be made no later than when the change is authorized by the Owner, and such extension shall be for such reasonable time as the Architect may determine upon evaluation of the impact of the proposed change in the Work on the critical path of construction. Where the period of anticipated delay cannot be reasonably calculated at the time the change is requested, the Contractor shall, in the proposed Change Order, estimate the anticipated delay period and propose a mechanism for the parties to decide the period of delay that will be permitted. In such case, the Architect shall determine the reasonable extension of Contract Time to be permitted, and Change Order shall accordingly extend the Contract Time. For changes in the Work that do not affect the progress of the entire Work, the Owner reserves the right to grant a Contract Time extension only for the area, phase, activity, or element of the Work affected by the change, or
- .6) Any Change Order for extension of Contract Time made as a result of a labor dispute will authorize a Contract Time extension no longer than the dispute period plus a reasonable mobilization period, and such extension may be less than such periods depending on the actual effect the dispute had on the overall progress of the Work and the operations that were actually curtailed or suspended. Lockouts over which the Contractor has control will not be a valid reason for a Contract Time extension or
- .7) Except for changes in the Work, all requests for Change Orders for extensions of Contract Time shall be made in writing to the Architect not more than twenty-one calendar days after the beginning of the first occurrence of the delay; otherwise they shall not be considered. In the case of a continuing delay only one request shall be necessary, or

The Contractor shall not be entitled to an extension of the Contract Time or additions to the Contract Sum for delays attributable to causes other than those delineated in this Section 8.3.1, including but not limited to the following:

- .1) Commonly occurring conditions such as time for curing concrete, drying of paint, and other foreseeable construction related time requirements,
- .2) Failure to provide sufficient labor and equipment to maintain satisfactory progress,
- .3) Delays resulting from improper scheduling or failure to have shop drawings or samples submitted in ample time for review under a reasonable schedule, or
- .4) Delays from failure by the Contractor to schedule inspections or testing.
- .5) Late or slow delivery of materials from a supplier or fabricator when the material was available in warehouse stock, or when delivery was delayed by reasons of late ordering, financial consideration or other causes within the power of the Contractor to avoid, or
- .6) Plant or equipment failure.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values and Schedule of Estimated Periodic Requests for Payment

§ 9.2.1 The Contractor shall submit a schedule of values to the Owner and Architect before the first Application for Payment, a Schedule of Values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Owner may require. The Schedule of Values shall show each major item of the Work and each subcontracted item of the Work as separate line items on a form acceptable to the Owner and the Architect. This Schedule of Values, unless objected to by the Architect or the Owner shall together with on-site observations by the Architect and substantiating data as required by

the Owner and the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 Before starting any of the Work, and from time to time upon request from the Owner, the Contractor shall furnish a Schedule of estimated periodic requests for payment for the Owner's financial planning guidance. These Schedules shall indicate the anticipated amount that the Contractor will request each month, taking into consideration the Construction Schedule, expected deliveries, and retainage. The Contractor will not be bound to the estimated amounts, but should the actual requested amounts vary substantially from the estimates, the Contractor shall revise and deliver the revised schedule to the Owner.

§ 9.3 Applications for Payment

§ 9.3.1 The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases from Subcontractors and suppliers, and shall reflect retainage as provided for in the Contract Documents. Applications for payment shall be made with the Owner's form and shall not be made more frequently than once per month. Applications for payment will not be paid until receipt of an updated schedule per Section 3.10.1, and verifications that prevailing wage forms, and jobs reporting forms, if applicable, have been submitted and are up to date.

(Paragraphs deleted)

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously approved by all parties and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.4 The Contractor may request advance approval by the Owner of payment for materials and equipment stored off the Project Site pursuant to Section 9.3.2, which approval the Owner may grant or deny in its sole option and discretion, as follows:

- .1) The Owner shall be the sole judge as to the types of materials and equipment it will pay for while in storage off the Project site and the conditions of payment.
- .2) Notwithstanding any advance approval or anything herein to the contrary, the Owner will not pay for materials or equipment in storage off the Project site that are:
 - a. Damaged or otherwise defective,
 - b. Off-the-shelf type materials,
 - c. Held at the producer's plant, or
 - d. Produced over a period of time and normally would be installed in accordance with a schedule over a period of time as they are delivered, unless the Owner caused a significant change in the schedule.
- .3) As a condition to payment for materials or equipment stored off the Project site, at the start of the Work, the Contractor shall submit a proposed list to the Architect and Owner specifying the following:
 - a. The item and the name of the person or party requesting it,
 - b. The reason storage is needed off the Project site,
 - c. The proposed storage site location, and
 - d. The anticipated delivery time to the storage site location.

- .4) Only the following materials and equipment will qualify for consideration for storage off the Project Site:
 - a. Major items,
 - b. Items that are specially fabricated or produced for the Work and are in accordance with the Contract Documents, and
 - c. Critical material that is in short supply or that has an uncertain long-lead-time delivery schedule.

- .5) To qualify for storage off the Project site materials and equipment shall also meet the following requirements:
 - a. Must be approved by the Owner,
 - b. Must be properly stored and protected,
 - c. Must be marked with the name of the Project,
 - d. The Contractor, Subcontractor, or supplier shall certify that the material or equipment is in storage and will be immediately available when needed,
 - e. The Owner or Architect shall examine and confirm that the material or equipment is stored at the designated storage site, and
 - f. Must be insured under policies of insurance acceptable to the Owner.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment shall take one of the following actions:

- .1) Issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor;
- .2) Issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or
- .3) Reject the entire Application for Payment, and return to the Contractor for revision..

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observation at the Project Site, evaluation of the Work and the Schedule of Values and other consideration and the data in the Application for Payment, that, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has:

- .1) Made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- .2) Reviewed construction means, methods, techniques, sequences, or procedures;
- .3) Reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or
- .4) Made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1) Defective Work not remedied;
- .2) Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

- .3) Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5) Damage to the Owner or a Separate Contractor;
- .6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7) Failure to provide monthly schedule update and prevailing wage data; or
- .8) Failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 If the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, they may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 The Owner shall not be deemed to be in breach of the Contract by reason of the withholding of any payment pursuant to any provision of the contract documents provided the Architect has approved the Owner's action or the portion of the Work for which payment is being withheld shall have been rejected by the Owner or any governmental authority.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of Owner's receipt of the Application for Payment if Application for Payment is made in compliance with the Contract Documents.

§ 9.6.1.1 Unless otherwise provided in the Contract Documents, the Owner, in making partial payments, will retain five (5) percent of the duly approved value of the Work performed under the Contract Documents until Certificate of Substantial Completion(s) is/are issued.

Once Substantial Completion(s) has/have occurred and the Work is deemed satisfactory by the Owner, the retainage amount may be reduced to an amount determined by the Owner.

§ 9.6.1.2 The Contractor may, at the Contractor's option, deposit bonds or securities with the Owner or in a bank or trust company to be held in lieu of cash retainage for the benefit of the Owner. In that event, the Owner shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the Contractor. Interest on the bonds or securities shall be payable to the Contractor as it accrues. Bonds and securities deposited or acquired in lieu of retainage shall be of a character approved by the state commissioner of management and budget pursuant to the requirements of Minnesota Statute §15.73, (approval required).

If the Owner incurs additional costs as a result of the exercise of the option described above, the Owner may recover the costs from the Contractor by reducing the final payment due under the Contract. As Work on the Contract progresses, the Owner shall, upon demand, inform the Contractor of all accrued costs.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ten (10) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not pay any Subcontractor or supplier any undisputed amount on time, it shall pay interest of 1-1/2% per month or any part of a month. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00, pursuant to Minnesota Statute §16A.1245. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due the Subcontractor.

§ 9.6.2.1 If the Owner does not make payment to the Contractor due to the fault of the Contractor, but not due to the fault of a particular Subcontractor, the Contractor shall pay such Subcontractor on demand at any time after the payment should otherwise have been made, for the Subcontractor's work to the extent completed and undisputed, less any required retainage percentage.

§ 9.6.2.2 The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor under Article 11 and the Contractor shall require each Subcontractor to make similar payments to their Sub-subcontractors.

§ 9.6.3 The Architect or Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner or Architect have the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to a subcontractor or material and equipment supplier.

§ 9.6.5 The Contractor's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor if and for so long as the Contractor fails to perform any of its obligations under the Contract Documents or is otherwise in default under the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the opinion of the Owner to cure any such default or failure of performance by the Contractor.

(Paragraph deleted)

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, the Contractor shall notify the Owner. The Owner shall direct the Architect to take action per Article 9.4.

§ 9.8 Substantial Completion(s)

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Architect, after inspection and consultation with the Owner, and the Contractor consider that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, in accordance with the Contract Documents, the Architect shall prepare a comprehensive list of items, referred to as the punchlist, to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor shall proceed promptly to complete and correct items on such list.

§ 9.8.3 Upon receipt of the Contractor's finalized punchlist, the Architect will prepare a Substantial Completion Certificate for the work or designated portion thereof after the Architect:

- .1) Determines on the basis of their observation that the Work or designated portion thereof is substantially complete;
- .2) Consults with the Owner to identify any items missing on the punchlist; and
- .3) Receives authorization from the public authority having jurisdiction that the area can be occupied.

If the Architect's observation discloses any item, whether or not included on the Contractor's punchlist, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another observation by the Architect to determine Substantial Completion. The cost of any re-observation shall be at the expense of the Contractor and shall be deducted from the Contract Sum

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date(s) of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate(s) of Substantial Completion.

§ 9.8.5 The Certificate(s) of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate(s). Upon such acceptance, the Owner may make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment may be sufficient to increase the total payments to 100% of the Contract Sum, less 2.0 times the value of such amounts as the Architect shall determine for incomplete Work or Work not in accordance with the requirements of the Contract Documents, and unsettled claims (including the cost of any third party to finish such incomplete Work or Work not in accordance with the requirements of the Contract Documents and all compensation and expenses of the Architect and the Owner related thereto). In the event any such incomplete Work or Work not in accordance with the requirements of the Contract Documents is not completed to the satisfaction of the Owner within ninety (90) days of the Architect's notice to the Contractor that such Work is incomplete or not in accordance with the Contract Documents, the Owner may complete the incomplete Work or Work not in accordance with the requirements of the Contract Documents and deduct from the final payment any and all costs incurred by the Owner in completing such Work.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage pursuant to Section 2.6, provided such occupancy or use is consented to by the Contractor and authorized by public authorities having jurisdiction over the Project. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a punchlist to the Architect as provided under Section 9.8.2. The Architect shall prepare a Certificate of Substantial Completion per Article 9.8.4.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final observation, the Architect will promptly make such observation. If the Architect's observation discloses any item, whether or not included on the Contractor's punchlist, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall correct such Work and notify the Architect when Work is completed. The cost of any re-observation shall be at the expense of the Contractor and shall be deducted from the Contract Sum.

When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor shall submit final Application for Payment.

The Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect for Contractor's contract close out review and/or approval including, but not limited to:

- .I Confirmation of the Minnesota Department of Revenue accepting form(s) IC134, "Withholding Affidavit for Contractors", for the Contractor and all Subcontractors, in compliance with Minnesota

- Statutes §290.92 and §270C.66 requiring withholding of Minnesota income tax from wages paid to employees related to contract services with the State of Minnesota;
- .2 Receipt of extra materials (attic stock, tools and spare parts) as specified;
 - .3 Final O&M Manuals as specified;
 - .4 Written Guarantees and Warranties as specified;
 - .5 Field Record "As-Built" drawings and project manual (referred to as Redline set);
 - .6 Final testing and balancing report(s);
 - .7 Final commissioning report if applicable;
 - .8 All prevailing wage forms;
 - .9 All jobs reporting forms if applicable;
 - .10 Written evidence of resolution of prevailing wage issues, if applicable; and
 - .11 Consent of surety, if required by Owner, to final payment.

If any claim remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees. The Contractor's obligations under this Section 9.10.2 shall survive the Owner's acceptance of the Work or termination of the Contract.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, subject to the provisions of Sections 9.10.1 and 9.10.2, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted less retainage provided for in the Contract Documents. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect on an original, executed AIA document G707 or any substitute or replacement document that is acceptable to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims

§ 9.10.4 Neither the final acceptance nor payment shall relieve the Contractor of responsibility for faulty materials or workmanship, and the Contractor shall remedy any defects due thereto and pay for any damage resulting therefrom in accordance with the requirements of the Specifications. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from any of the following:

- .1) Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2) Failure of the Work to comply with the requirements of the Contract Documents;
- .3) Terms of special warranties required by the Contract Documents;
- .4) Faulty or defective Work appearing after Substantial Completion; or
- .5) Any duties or obligations of the Contractor that by the terms of the Contract survive the Owner's acceptance of the Work or termination of the Contract.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a material supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee and all affected individuals. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this contract. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970. All contracts and subcontracts that incorporate, by reference, the requirements of 29 CFR Part 1910 and/or 1926 have the same force and effect as if given in full text. The Contractor must address any claims or disputes that pertain to a referenced requirement directly with the Owner.

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§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- .1) All employees on the Work and other persons who may be affected thereby;
- .2) All Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor(s), or Sub-subcontractor(s); and
- .3) Other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or Project site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from exposure to a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), mercury, lead, radioactive materials, or other hazardous materials encountered on the Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner, shall obtain the services of a qualified laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material

or substance is found to be present, to cause it to be removed or otherwise rendered harmless. When the material or substance has been removed or otherwise rendered harmless, Work in the affected area shall resume. By Change Order, the Contract Time shall be adjusted appropriately and the Contract Sum shall be adjusted in the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor, Subcontractors, or Sub-subcontractors bring to the Project site.

§ 10.3.4 The Contractor shall indemnify, defend (with counsel acceptable to the Owner), and hold harmless the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the Project site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. The obligations contained in this Section 10.3.4, shall survive the Owner's acceptance for the Work or termination of the Contract.

(Paragraphs deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall not commence Work under the Contract until it has obtained all of the insurance described in the Article 11. All policies and certificates of insurance shall provide that the policies shall be supplied and maintained by a company or companies lawfully authorized to transact business in the jurisdiction in which the Project is located and remain in force and effect throughout the term of the Contract.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, or any later date required by the Contract Documents, and, with respect to the Contractor's completed operations coverage, until the longer of three years after final payment by the Owner or the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance, including all endorsements, acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain:

- .1) The requirements found in Section 11.5,
- .2) A provision that should coverages afforded under the policies be canceled, the Contractor will notify the Owner within 5 business days, or allowed to expire at which time the Contractor will provide at least 30 days prior written notice to the Owner and
- .3) Contain a provision under which the insurance company waives any right it may have to assert the immunity of the Owner as a defense to any claims arising out of the Contract.

§ 11.1.4 Builder's Risk

The Contractor will be responsible to purchase and maintain an "All Risk" or equivalent Builder's Risk policy insuring the interest of the Owner, its consultants, Contractor, and Subcontractors of all tiers. Coverage on an "All Risk" or equivalent basis shall include the perils of flood, earthquake, and pollution clean-up expense. Any deductible shall be the sole responsibility of the Contractor and shall not exceed \$10,000 without the written approval of the Owner.

- .1) The Builder's Risk policy will cover all materials, supplies and equipment that are intended for construction of and specific installation in the Project while such materials, supplies and equipment are located at the Project site, in transit, and while temporarily located away from the Project site for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

- .2) Any property not covered by the Builder's Risk policy, such as the Contractor's or any Subcontractor's licensed motor vehicles or personal property, including job trailers, machinery, tools, equipment, and property of a similar nature not destined to become a part of the Project, shall be the Contractor's responsibility, and the Contractor may self-insure or provide other insurance at its option for the same.
- .3) Waiver of Liability: Absent Owner or Architect negligence or breach of a specific contractual duty specifically and logically related to the damage or loss, the Owner or Architect will not be responsible for loss or damage to property of any kind owned or leased by the Contractor, the Contractor's Subcontractors of all tiers, and/or the Contractor's/Subcontractors' employees, servants, or agents.
- .4) Waivers of Subrogation: To the extent that loss or damage to property, materials, supplies and equipment is covered by insurance pursuant to the provisions of Section 11.4.1 hereof, the Owner, the Owner's consultants of all tiers, the Contractor and the Contractor's Subcontractors of all tiers waive all rights against each other and against the Architect and the Architect's subconsultants of all tiers for loss or damage to said property, materials, supplies and equipment. The Owner shall require a conforming agreement from the Architect and the Architect's subconsultants of all tiers to waive rights against the Owner and Contractor and their respective consultants and Subcontractors of all tiers. The insurance policies providing the coverage referred to herein shall provide such waivers of subrogation by endorsement or otherwise.
- .5) All losses and claims shall be immediately reported to the Owner and applicable insurance carrier, under loss notice procedures as directed by the Contractor.
- .6) Any loss insured under this Section 11.1.4 shall be adjusted with the Contractor and made payable to the Contractor as trustee for all insured parties, as their interests may appear, subject to the requirements of any applicable security clause. The Contractor shall pay the Owner a just share of any insurance moneys received by the Contractor, and by appropriate agreement, written where legally required for validity, the Contractor shall make payments to the Subcontractors and lower tiered Sub-subcontractors in similar manner.
- .7) The Contractor shall be responsible for payment of any Builder's Risk insurance deductible at each and every loss occurrence. The Contractor may self-insure or obtain insurance to cover any losses, at its option. The Contractor's insurance carrier will be responsible for and pay the amount of any insured loss occurrence above any deductible amounts specified herein, up to the Builder's Risk policy limit, as it may be applied to any loss under the Contract.

§ 11.1.5 Commercial General Liability

11.1.5.1 The Contractor shall obtain and maintain commercial general liability insurance to cover claims which may arise from operations under this Contract whether such operations be by Contractor, Subcontractor, Sub-subcontractor, or by anyone directly or indirectly employed under this Contract. Unless otherwise specified, the insurance **minimum** limits of liability shall be as follows:

- .1) \$2,000,000 - Per Occurrence
- .2) \$2,000,000 - Annual Aggregate applying per project or location
- .3) \$2,000,000 - Annual Aggregate applying to Products/Completed Operations
- .4) \$50,000 - Fire Damage (any one fire)
- .5) \$5,000 - Medical Expenses (any one person)

11.1.5.2 The following coverages shall be included:

- .1) Premises and Operations Bodily Injury and Property Damage
- .2) Personal Injury and Advertising Injury
- .3) Products and Completed Operations Liability, to be maintained for at least three (3) years after completion of the Work under this Contract
- .4) Contractual Liability as provided in Insurance Services Office (ISO) form GC 00 01 12 04 13 or its equivalent, and applying, as applicable, to Article 3.18.
- .5) Pollution Exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – GC 00 01 12 04 13 or equivalent
- .6) Independent contractors (let or sublet work)
- .7) Waiver of Subrogation in favor of the Owner

Coverage will not contain any restrictive endorsement(s) excluding or limiting Broad Form Property Damage (BFPD) or Explosion, Collapse, Underground (XCU)

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11.1.5.3 The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota, named as an Additional Insured, to the extent permitted by law, for claims arising out of the Contractor's negligence or the negligence of those for whom the Contractor is responsible for both ongoing and completed operations..

§ 11.1.6 Business Automobile Liability

11.1.6.1 The Contractor shall maintain insurance coverage for liability arising out of the ownership, operations, use, or maintenance of all owned, non-owned and hired vehicles which may arise from operations under this contract. Unless otherwise specified, the insurance minimum limits shall contain the following provisions:

- .1) Minimum coverage of \$2,000,000 - per occurrence Combined Single limit for Bodily Injury and
- .2) Property Damage

11.1.6.2 The following coverages shall be included:

- .1) Owned
- .2) Hired
- .3) Non-owned coverage; and
- .4) Waiver of Subrogation in favor of Owner

§ 11.1.7 Professional Liability-Design Errors and Omissions

If the Owner specifies that the Contractor is to provide design-related services and, pursuant to Subparagraph 3.12.10, the Contractor provides such services with its employees, the Contractor shall maintain professional liability design errors and omissions insurance covering negligent acts, errors or omissions arising out of the performance, or failure to perform, such professional services included in the Contract Documents. Additionally, the Contractor shall require its Architectural and Engineering subconsultants, if any, to maintain professional liability insurance. All such insurance shall be maintained for a minimum of three (3) years, following Final Substantial Completion or earlier termination of the Project. Unless otherwise specified, the minimum coverage for such insurance must be as follows:

- .1) Minimum limit liability of \$2,000,000 per occurrence, \$2,000,000 annual aggregate;
- .2) Deductible not to exceed \$50,000 (if in excess, submit certified financial statement), without written approval of the Owner; and
- .3) 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.

Evidence of insurance shall be filed with the Owner prior to start of design services, if provided.

§ 11.1.8 Workers' Compensation Insurance

Contractor shall provide workers compensation insurance for all employees and shall require any Subcontractor to provide workers compensation insurance in accordance with the statutory requirements of the State of Minnesota and shall include:

- .1) Part 2 – Coverage B, Employers 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
- .2) Coverage C, All States coverage,
- .3) If applicable, USL&H, Maritime, Voluntary and Foreign coverage, and
- .4) A waiver of Subrogation in favor of the Owner.

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.

If the Contractor is self-insured for its obligation under the Worker's Compensation Statutes in the jurisdiction where the Project is located, a Certification of the Authority to Self-Insure such obligations shall be provided. Evidence of Subcontractor insurance shall be filed with the Contractor.

§ 11.1.9 Aviation and/or Marine

Should aircraft or watercraft of any kind be used by Contractor, any tier of Subcontractor or by anyone else on their behalf, Contractor or Subcontractor shall maintain or cause the operator of the aircraft/watercraft to maintain aircraft/watercraft public liability insurance including bodily injury, property damage and passenger liability, as respects any aircraft/watercraft owned, used, operated or hired in connection with the Work by the Contractor, Subcontractor or anyone else in the following limits: Aircraft/Watercraft Liability - \$10,000,000 combined single limit for bodily injury and property damage for any one occurrence.

Evidence of insurance shall be filed with the Owner prior to use of equipment on project.

§ 11.1.10 Umbrella Policy

An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's primary policy limits to satisfy the full policy limits required by the Contract. The Board of Trustees of the Minnesota State Colleges and Universities and its officers and members, to include the Project's College or University, the State of Minnesota, officers and employees of the State of Minnesota, named as an Additional Insured, to the fullest extent permitted by law, for claims arising out of the Contractor's negligence or the negligence of those for whom the Contractor is responsible for both ongoing and completed operations.

§ 11.1.11 Primary and Non-Contributory

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

(Paragraphs deleted)

§ 11.2 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining its own liability insurance or providing for some form of self-insurance to protect the Owner against claims which may arise from operations under the Contract.

§ 11.3 Boiler and Machinery Insurance

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insured.

(Paragraph deleted)

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 Unless otherwise exempted in these Contract Documents, for any Project where the estimated total cost to complete the Work is greater than \$100,000, the Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond (individually a "Bond", collectively the "Bonds") to the Owner. The Performance Bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of the Contract Sum as security for the faithful performance of the Contract Documents, and the Labor and Material Payment Bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of the Contract Sum as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such Bonds shall be on forms approved by the Owner, and shall name the Owner as primary obligee.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

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

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between the Contractor and any bonding agent or agencies used.

(Paragraphs deleted)

§11.4.4 In the event of Change Orders that result in an increase in the Contract Sum, the penal sum of each Bond shall increase in the amount of such change in the Contract Price without obtaining the surety's consent up to a maximum of ten (10) percent of the penal sum. Any aggregate increase in excess of ten (10) percent of the original penal sum shall require the surety's written consent.

§11.4.5 If the Owner determines that the surety providing the Bonds no longer meets the requirements of Subsection 11.4.3, the Contractor shall obtain an adequate replacement surety that will provide acceptable Bonds in the same form and amount as the Bonds issued by the original surety. The Contractor shall pay the premiums on such new Bond(s). The Contractor acknowledges that further payments to Contractor may not be made until the new surety has been qualified and approved.

§ 11.4.6 Final acceptance of the Work shall not relieve the Contractor or the surety from their respective obligations under the Contract and Bonds, including guarantees of materials, equipment, installation, service, performance, and payment.

§ 11.4.7 If for any reason the Bonds shall cease to be adequate security to the Owner in the Owner's reasonable discretion, the Contractor shall substitute bond(s) from other sureties and in amount(s), format(s) and content(s) satisfactory and acceptable to the Owner, in the Owner's reasonable discretion. The Contractor shall pay the premiums on such new bond(s). The Contractor acknowledges and agrees that the Owner may withhold further payments to the Contractor until the new sureties and bond(s) have been agreed to and accepted by the Owner.

§ 11.5. Other Insurance Requirements

§ 11.5.1 The Contractor shall not allow insurance to lapse, be reduced in limits or coverage, be materially changed during the Contract, including the warranty period. In the event of any cancellation, non-renewal, reduction or material change of any of the policies, thirty days (30) written notice shall be given to the Owner and the Architect and all insured parties. Certificates shall bear acknowledgement of the notice requirement.

§ 11.5.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the Minnesota State Colleges and Universities within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(s) contain a provision that coverage afforded under the policy(s) will not be canceled without at least thirty (30) days advance written notice to the Minnesota State Colleges and Universities.

§ 11.5.3 Contractor is responsible for payment of contract related insurance premiums and deductibles. If Contractor is self-insured, a Certification of Self-insurance must be attached.

§ 11.5.4 Insurance companies must have an "AM Best" rating of A – (minus) and a Financial Size Category of VII or better, and must be authorized to do business in the State of Minnesota.

§ 11.5.5 This Article 11 establishes minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance that may be needed in connection with this Contract.

§ 11.5.6 Insurance companies shall waive their rights to assert the immunity of the Owner as a defense to any claims arising out of this Contract.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's, the Owner's, or any government authority's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by any such entities, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect, the Owner, or a government authority has not specifically requested to examine prior to its being covered, any of such entities may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall be at the Owner's expense as modified by a Change Order. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion, the Contractor shall promptly correct Work rejected by the Architect, the Owner, or a government authority, or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. All costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. Additionally, the Contractor shall be responsible for, and the Owner may collect from the Contractor, or deduct from payments or sums due to the Contractor under the Contract, the reasonable value of the time of all of Owner's, separate contractors' and Architect's personnel, and the time of any other party under contract with the Owner involved in the correction and re-inspection of such rejected Work.

§ 12.2.2 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.8.4, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive the termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.1 The one-year period for correction of Work shall be extended by one year after the date the corrective Work was performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.2 The Contractor shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.2.3 The Contractor shall bear all direct and consequential cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

(Paragraphs deleted)

§ 12.2.2.4 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case one of the following is required as the Owner in its sole option and discretion may determine: (1) the Contractor shall warrant that the nonconforming Work shall perform according to the intent of the Contract Documents for a time period of sufficient length to protect the Owner from premature replacement or (2) the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If the amount is determined after final payment, the Contractor shall reimburse the Owner the agreed upon amount.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Minnesota and venue for any claims or actions shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole option and discretion. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing. No election of any individual remedy by the Owner shall be deemed to be a waiver of additional remedies available under the Contract Documents or imposed or available at law or equity.

§ 13.3.3 If the Owner has the right to collect any amount from the Contractor under the Contract, including the right to an adjustment in the Contract Sum, that right shall include the right to deduct any amount due from payments due the Contractor under the Contract Documents, and if payments due the Contractor under the Contract are not sufficient to cover such amounts, or if the Owner has made final payment, the Owner may bring legal action to collect the amount.

§ 13.4 Tests and Inspections

§ 13.4.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect timely notice of its readiness so the Architect and/or the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals. The Owner shall select and contract with all testing and inspection entities, unless otherwise specified.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity selected and contracted by the Owner, and the Contractor shall give timely notice to the Architect, Owner, and the public authorities of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including cost of initial testing pursuant to Section 13.4.2, those of repeated procedures such as retesting and re-inspection, and compensation for services and expenses of the Architect, the Architect's consultants, the Owner, and the Owner's testing and inspection shall be at the Contractor's expense and shall be deducted from the Contract Sum.

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§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect and Owner are to observe tests, inspections, or approvals required by the Contract Documents, the Architect and Owner will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 The Contractor shall at the Contractor's expense: (1) schedule and coordinate all testing and inspections called for by Sections 13.4.1, 13.4.2 and 13.4.3, (2) provide necessary and safe access to testing and inspection areas, and (3) make any repairs to the Work required due to testing, observation or inspection.

(Paragraphs deleted)

§ 13.5 Prevailing Hours of Labor and Prevailing Wage rates

Pursuant to Minnesota Statutes §177.41 to §177.44 and corresponding Rules 5200.1000 to 5200.1120, this project contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply may result in civil or criminal penalties.

§13.6 Discrimination on Account of Race, Creed, or Color Prohibited in Contract

The Contractor shall conform with and agree to provisions of Minnesota Statute, §181.59 that prohibits discrimination in the hiring of labor by reason of race, creed or color, which section is reproduced below:

"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 the Contractor 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 of 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 cancelled 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."

§ 13.7 Assignment of Antitrust Claims

The Contractor shall assign to the State of Minnesota any and all claims for overcharges as to goods and materials purchased in connection with this order or Contract resulting from antitrust violations which arise under the antitrust laws of the United States, and the antitrust Laws of the State of Minnesota. In addition, the Contractor shall warrant and represent that each of the Contractor's first tier suppliers and Subcontractors shall assign any and all such claims to the State of Minnesota.

§ 13.8 Project Management Software

§ 13.8.1 The Contractor shall use Minnesota State internet-based Enterprise Project Management System (EPMS) during the design and construction of the Project. The selected system is based upon software created by the firm, "e-Builder". The functionality of this software includes, but is not limited to the electronic filing of documents and/or processing workflows for the following:

- .1) Agreement between Owner and Contractor;
- .2) Current Contractor Certificate of Insurance;
- .3) Responsible Contractor Forms;

- .4) Prevailing Wage Reports;
- .5) Jobs Reporting Forms;
- .6) Construction schedules including milestone dates;
- .7) Construction contract modifications, including Architectural Supplemental Instructions, Requests For Information (RFIs), Proposal Requests (PRs), Construction Change Directives (CCDs), and Change Orders (COs);
- .8) Pay Applications with Schedule of Values;
- .9) Construction submittals, including submittal schedule, product data, shop drawings, and samples;
- .10) Construction closeout documents; and
- .11) Other Project related information.

13.8.2 The Owner will provide and manage a login license for the Contractor's designated Project representative(s) at no cost to the Contractor. The Owner will provide initial software training to the Contractor's designated Project representative(s) at no cost to the Contractor. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of this software by the Contractor.

§13.9 Workforce (Affirmative Action) Compliance

Minnesota State intends to carry out its responsibility for requiring affirmative action by its CONTRACTORS. When the value of the contract is in excess of \$100,000 and the CONTRACTOR has more than 40 employees, the State of Minnesota Work Force Certification form is required. See the Instructions to Bidders and the Bid Form for the form for requirements and submittal information. Vendors are cautioned to read closely the section listed elsewhere in this specification titled, "Notice to Bidders, Affirmative Action Certificate of Compliance", Division 00 45 36.

§13.10 Equal Pay Certification

Minnesota State intends to carry out its responsibility for requiring equal pay by its Contractors. If applicable, a copy of the Equal Pay Certificate must be submitted with your response to the Request for Bids solicitation. If the amount of this contract is in excess of \$500,000.00 and the Contractor has 40 or more full-time employees in Minnesota or a state where the business has its primary place of business on a single day during the prior 12 months, the Contractor must comply with the requirements of Minnesota Statutes §363A.44 prior to contract execution. Contractor must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to Contract execution. Contractor is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. A certificate is valid for four years.

§13.10.1 The consequences for the Contractor's failure to secure and comply with Minnesota Statutes §363A.44 or make a good faith effort to do so, include but are not limited to, suspension or revocation of a certificate of Compliance by the Commissioner of Minnesota Department of Human Rights, and termination of all or part of this contract by Minnesota State.

§13.10.2 See the Instructions to Bidders and the Bid Form for requirements and submittal form information.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, or a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, for any of the following reasons:

- .1) Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2) An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

(Paragraph deleted)

- .3) The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, under direct or indirect contract with the Contractor, repeated suspensions, delays, or interruptions of the entire Work by the

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Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 The Contractor may suspend work after written notice to the Owner and Architect if Certificate of Payment has not been acted upon within 60 days after submission. The Contractor may terminate the contracts per Article 14.1.4.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1) Refuses or fails to supply enough properly skilled workers or proper materials;
- .2) Repeatedly fails to make payment to Subcontractors for materials or labor or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3) Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4) Files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of its commencement, makes an assignment for the benefit of creditors, has a receiver appointed to manage its assets, or otherwise becomes insolvent, or
- .5) Otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1) Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2) Accept assignment of subcontracts pursuant to Section 5.4; and
- .3) Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the direct and indirect consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) and other damages incurred by the Owner, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner will be approved as to reasonableness by the Architect, but when exercising any rights or remedies under this Section 14.2.4, the Owner shall not be required to obtain the lowest price for the Work performed. This obligation for payment shall survive the Owner's acceptance of the Project or termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1) That performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2) That an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1) cease operations as directed by the Owner in the notice;
- .2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, and costs incurred by reason of such termination, but not overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, within the time period specified by applicable law.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Owner and the Architect. Claims by any party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, otherwise claims shall be waived.

§ 15.1.3.2 At the next Project meeting following delivery of the notice of Claim, or such earlier date as the Owner may determine, the Owner, the Architect and the Contractor shall attempt to resolve the Claim through discussions. If a Claim is not resolved through discussions between the Owner, the Architect, and the Contractor within 30 days after the initial meeting, the Contractor may, upon mutual agreement of all of the parties, proceed with mediation pursuant to Section 15.3.1.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Sum, where the Owner believes there has been no change in the Work from that specified in the Contract Documents, written notice as provided herein shall be given to the Owner and the Architect before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5.2 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, claims shall be filed in accordance with this Article 15.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, pursuant to Section 8.3.1.4, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

§ 15.1.7 If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents that are not resolved at the meetings under Section 15.1.3 may, at the sole option and discretion of the Owner, be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. If the Owner elects to refer a Claim to the Initial Decision Maker, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefore; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall not be final and binding on the parties unless the parties agree in writing to have such decision be binding on them.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.3.

(Paragraph deleted)

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraph deleted)

§ 15.3 Mediation

§ 15.3.1 Claims arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 9.10.4 and 9.10.5 may, with the consent of the Owner and the Contractor, be subject to mediation in advance of litigation.

§ 15.3.2 The parties shall share the mediator's fee and any filing fees equally.

(Paragraphs deleted)

§ 15.4 Survival

The provisions in this Article 15 shall survive the Owner's acceptance of the Project or termination of the Contract.

(Paragraphs deleted)

ARTICLE 16 PROHIBITION AGAINST GRATUITIES - ACCEPTANCE OF ADVANTAGE

§ 16.1 The Contractor acknowledges having read and understood Minnesota Statutes, §15.43, which is incorporated herein by reference as if fully set forth herein.

§ 16.2 The Contractor agrees that its participation with any employee of the Owner in acts that violate Minnesota Statutes, §15.43 constitutes a material default under this Agreement entitling the Owner to terminate the Contract for cause.

§ 16.3 By signing the Contract Documents, the Contractor certifies that no officer, representative, agent or employee of the Owner has benefited or will benefit financially or materially from this Contract.

ARTICLE 17 USE OF NAME OR LOGO

§ 17.1 Contractor agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the Owner or the name of any representative of the Owner in any sales promotion work or advertising, or any form of publicity, without the written permission of the Owner in each instance.

§ 17.2 The Contractor and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's prior written approval.

ARTICLE 18 MINNESOTA GOVERNMENT DATA PRACTICES ACT

§ 18.1 The requirements of Minnesota Statute §13.05, Subd. 11 apply to this contract. The Contractor and Owner must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the Owner in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this contract. The civil remedies of Minnesota Statute §13.08 apply to the release of the data referred to in this clause by either the Contractor or the Owner.

In the event the Contractor receives a request to release the data referred to in this clause, the CONTRACTOR must

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immediately notify the Owner. The Owner will give the Contractor instructions concerning the release of the data to the requesting party before the data is released.

18.2 DATA DISCLOSURE

§ 18.2.1 As a condition of this contract, Contractor is required by Minnesota Statute §270C.65 to provide a social security number, a federal tax identification number or Minnesota tax identification number. This information may be used in the enforcement of federal and state tax laws. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment of state obligations. Supplying these numbers could result in action to require Contractor to file state tax returns and pay delinquent state tax liabilities. This contract will not be approved unless these numbers are provided.

§ 18.2.2 If the Contractor is an independent contractor, Minnesota Statute §256.998 requires the state to report your name, address and social security number to the New Hire Reporting Center of the Minnesota Department of Human Services unless your contract is for less than two months in duration with gross earnings of less than \$250.00 per month. This information may be used by state or local child support enforcement authorities in the enforcement of state and federal child support laws.

§ 18.3 The Contractor and its employees, agents, and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's prior written approval.

§ 18.4 The Contractor's obligations under this Article 18 shall survive the Owner's acceptance of the Work or termination of this Contract.

ARTICLE 19 AUDIT

§ 19.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to the Owner.

§ 19.2 The Owner and/or its accountants, auditors, and agents, the Minnesota State Auditor, and the Legislative Auditor for the State of Minnesota, shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of Contractor's information, materials, records or data relating to the Project, including but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating Work sheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, drawings, receipts, purchase orders, vouchers, memoranda, subscriptions, recordings, computerized information, drawings, agreements, and other information, materials, records or data relating to this Project ("Records"). Such Records shall also include information, materials, records or data necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract. In those situations where the Records have been generated from computerized data, the Contractor agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

§ 19.3 The Contractor shall preserve the Records for a period of 12 years after final payment or for such longer period as required by law, provided, however, that if a Claim is asserted during said 12-year period, the Contractor shall retain all such Records until the Claim has been resolved.

§ 19.4 The Contractor shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders) to comply with the provisions of this Article 19 by insertion of the requirements hereof in a written agreement between the Contractor and the payee.

§ 19.5 The Owner and its accountants, auditors and agents shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article, and the Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Contractor's offices, to not interact with the Contractor's employees, and to not otherwise unreasonably interfere or disrupt the work of the Contractor's employees.

§ 19.6 If an Audit discloses overpricing or overcharges (of any nature) by the Contractor to the Owner in excess of one percent of the total contract billings, in addition to repayment or credit for overcharges, the reasonable, actual cost of the Audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payment that must be made as a result of any Audit shall be made within a reasonable time not to exceed 90 days from presentation of the Owner's findings to the Contractor.

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