

 **AIA® Document A105™ – 2017**

Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the date last entered by required signatories

BETWEEN the Owner:

See A105 Project Attachment

and the Contractor:

See A105 Project Attachment

for the following Project:

See A105 Project Attachment

The Architect:

See A105 Project Attachment

The Owner and Contractor agree as follows.

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.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of:

- .1 This Agreement,
(Paragraphs deleted)
- .2 Drawings, Specifications, Addenda issued prior to the execution of this Agreement and accepted in writing by the Owner, and
- .3

(Paragraphs deleted)
Other documents listed in this Agreement, and Modifications issued after execution of this Agreement and accepted, in writing, by the Owner.

(Paragraph deleted)
All of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

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§ 2.2 Date of Commencement:

The date of commencement shall be:

The date set forth by a written Notice to Proceed issued by the Owner.

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:

(Paragraphs deleted)

See A105 Project Attachment

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

See A105 Project Attachment

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

(Paragraph deleted)

See Article 12

(Table deleted)

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

(Paragraph deleted)

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§ 3.4 Allowances, if any, included in the Contract Sum are as follows:

(Table deleted)

(Paragraph deleted)

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§ 3.5 Unit prices, if any, are as follows:

(Paragraph deleted)

See A105 Project Attachment

(Table deleted)

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

§ 4.1.1 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.2 The Owner shall make payment to the Contractor in conformance with Article 12 and as elsewhere provided in the Contract Documents.

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest

(Paragraphs deleted)

as provided for in the Contract Documents.

ARTICLE 5 INSURANCE

§ 5.1 Contractor's Insurance and Bonds

§ 5.1.1 The Contractor shall not commence Work under the Contract until it has obtained all of the insurance described in the Article 5. 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.

§ 5.1.2 The insurance required by Section 5.1.1 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

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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.

§ 5.1.3 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 5.1 shall contain (1) the requirements found in section 5.5, (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.

§ 5.1.4 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 Subsection 5.4.1 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 Subsection 5.1.4 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.

(Paragraphs deleted)

§ 5.1.5 Commercial General Liability

§ 5.1.5.1 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,

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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)

§ 5.1.5.2 The following coverages shall be included:

- .6 Premises and Operations Bodily Injury and Property Damage
- .7 Personal Injury and Advertising Injury
- .8 Products and Completed Operations Liability, to be maintained for at least three (3) years after completion of the Work under this Contract
- .9 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.
- .10 Pollution Exclusion with standard exception as per Insurance Services Office (ISO) Commercial General Liability Coverage Form – GC 00 01 12 04 13 or equivalent
- .11 Independent contractors (let or sublet work)
- .12 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).

§ 5.1.5.3 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.

§ 5.1.6 Business Automobile Liability

§ 5.1.6.1 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 Property Damage,

§ 5.1.6.2 The following coverages shall be included:

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

§ 5.1.7 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.
- .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 they are to be provided.

§ 5.1.8 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.

§ 5.1.9 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.

§ 5.1.10 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.

§ 5.1.11 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.

(Table deleted)

§ 5.2 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.

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§ 5.3 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.

§ 5.4 Performance Bond and Payment Bond- IF REQUIRED

(Paragraph deleted)

§ 5.4.1 If requested by the Owner, 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.

§ 5.4.1 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.

§ 5.5. Other Insurance Requirements

§ 5.5.1 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.

§ 5.5.2 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(ies) contain a provision that coverage afforded under the policy(ies) will not be canceled without at least thirty (30) days advance written notice to the Minnesota State Colleges and Universities.

§ 5.5.3 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.

§ 5.5.4 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.

§ 5.5.5 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.

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

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 The Contract

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

§ 6.2 The Work

The term "Work" means the construction and services required by the Contract Documents. The Contractor agrees to furnish, except as may be otherwise provided herein, all labor, services, means of construction, and material required for, and to construct, install, complete, and finish this Project in the most workmanlike and substantial manner, to the satisfaction in every respect of the Project Architect or other designated representative of Minnesota State, within the time herein specified, all in accordance with the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

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§ 6.3 Intent

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.

§ 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents

(Paragraphs deleted)

§ 6.4.1

The Contract Documents and copies thereof are to be used by the Contractor only with respect to this Project and shall not be used by the Contractor for any other purpose.

§ 6.4.2 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 in the Contract Documents, 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.

ARTICLE 7 OWNER

§ 7.1 Information and Services Required of the Owner

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.1.3 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. The term Architect shall also mean any authorized representative of the Architect. The term "Architect" shall also be read to mean the Architect/Engineer or the Engineer.

§ 7.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

§ 7.3 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 seven day period after receipt of written 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, correct such deficiencies. In such case, the Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.

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

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.5 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.

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ARTICLE 8 CONTRACTOR

§ 8.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect.

§ 8.2 Contractor's Construction Schedule

The Contractor, within 15 days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.

§ 8.3 Supervision and Construction Procedures

§ 8.3.1 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.

§ 8.3.2 The Contractor, within 15 days after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

§ 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

§ 8.5 Warranty

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment 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 12.5.

§ 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

§ 8.7 Permits, Fees and Notices

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. 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 full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

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§ 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

§ 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

§ 8.10 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material, and shall properly dispose of waste materials.

§ 8.12 Liability

§ 8.12.1 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 members, the Owner's representatives, the Owner's representatives' 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.

§ 8.12.1.1 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 or mechanics liens.

§ 8.12.1.2 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.

§ 8.12.2 In claims against any person or entity indemnified under this Section 8.12 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 8.12.1 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.

§ 8.12.3 Contractor's obligations under this Section 8.12 shall survive the Owner's acceptance of the Work or termination of the Contract. The obligations of the Contractor under this Section 8.12 shall not negate, abridge or reduce the liability of the Architect, the Architect's consultants, and agents and employees of any of them.

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ARTICLE 9 ARCHITECT

§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

§ 9.5 The Architect has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 Upon written request from either the Owner or Contractor, the Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 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.

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner. Consent shall not be unreasonably withheld.

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Contractor and subcontractors may add up to 10% of the direct cost of their own labor, 5% of the direct cost of materials and equipment. The Contractor's actual cost plus a total markup for overhead and profit, shall not to exceed 20%, for all tiers involved in the change to the Contract Sum.

§ 10.2 The Architect may authorize or order minor changes in the Work 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 authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 11 TIME

§ 5.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 5.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

§ 5.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

(Paragraphs deleted)

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 Contract Sum

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

§ 12.2 Applications for Payment

§ 12.2.1 The Contractor shall submit a Schedule of Values to the Owner and Architect before the first Application for Payment, 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.

§ 12.2.2 The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, 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 and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 12.2.3 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 Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

§ 12.2.4 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, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the Project site.

§ 12.3 Certificates for Payment

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (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 in writing of the Architect's reasons for withholding certification in part; or (3) reject the entire Application for Payment and return to the Contractor.

§ 12.4 Progress Payments

§ 12.4.1 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.

§ 12.4.1.1 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 as of the date of Substantial Completion. Once Substantial Completion has occurred and the Work is deemed satisfactory by the Owner, the retainage amount may be reduced to an amount determined by the Owner.

§ 12.4.1.2 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

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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 Statutes section 15.73, subdivision 3 (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.

§ 12.4.2 The Contractor shall pay each Subcontractor, no later than ten 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.

§ 12.4.3 Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 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 requirements of the Contract Documents.

§ 12.5 Substantial Completion

§ 12.5.1 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 the Owner can occupy or utilize the Work for its intended use.

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect and the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment.

§ 12.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect, if required by the Owner, data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, including, but not limited to:

- .1 Confirmation of the Minnesota Department of Revenue accepting form(s) IC134, "Withholding Affidavit for Contractors", for the Contractor and all Subcontractors, in compliance with Minn. Stat. 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 All written warranties, operations manuals, and as-built drawings, if applicable to the Project.
- .3 Written evidence of resolution of prevailing wage issues, if applicable,
- .4 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 Subsection 12.6.2 shall survive the Owner's acceptance of the Work or termination of the Contract.

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§ 12.6.3 Acceptance of final payment by the Contractor, a subcontractor or 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 13 PROTECTION OF PERSONS AND PROPERTY

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 campus delegated project manager.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

§ 15.2 Project Management Software

§ 15.2.1 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 insurance forms;
- .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
- .8) Requests For Information (RFIs), Proposal Requests (PRs), Construction Change Directives (CCDs), and Change Orders (COs);
- .9) Applications for Payment with Schedule of Values;
- .10) Construction submittals, including submittal schedule, product data, shop drawings, and samples;
- .11) Construction closeout documents; and
- .12) Other Project related information.

§ 15.2.2 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.

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§ 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.3 Jurisdiction and Venue

This Agreement and any changes thereto, shall be governed by the laws of the State of Minnesota. Except as otherwise provided in this Agreement, venue for all legal proceedings arising out of this contract, or breach thereof, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

§ 15.4 Mediation

§ 15.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.4.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Saint Paul, Minnesota, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.5 MINNESOTA STATUTES §181.59.

The CONSULTANT will comply with the provisions of Minnesota Statutes §181.59 which require: Every contract for or on behalf of the State of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the CONSULTANT agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no CONSULTANT, material supplier, or vendor, shall, by reason or race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) that no CONSULTANT, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) that a violation of this section is a misdemeanor; and (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

§ 15.6 DATA DISCLOSURE

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

§ 15.7 Minnesota Government Data Practices Act

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 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.

§ 15.8 Prevailing Wages

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.

§ 15.9 SURVIVAL OF TERMS. The following clauses survive the expiration, cancellation or termination of this contract: Liability; Data Disclosure; Government Data Practices Act; Copy Rights and Licenses; and Jurisdiction and Venue.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 Termination by the Owner for Cause

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor 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; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

See A105 Project Attachment

§ 17.1 This Agreement is comprised of the following documents:

- .1 AIA Document B105™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 B105-2017, Project Attachment
- .3 Certificate of Insurance
- .4 Drawings, Specifications, Addenda issued prior to the execution of this Agreement and accepted in writing by the Owner, and
- .5 Other documents listed in this Agreement, and Modifications issued after execution of this Agreement and accepted, in writing, by the Owner, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

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APPROVED:

This Agreement shall be effective on date identified on page one of the A101 Project Attachment.

OWNER

Signature and date are executed on the Project Attachment

Printed name and title are identified on the Project Attachment

FORM AND EXECUTION

Signature and date are executed on the Project Attachment

Printed name and title are identified on the Project Attachment

ARCHITECT

Signature and date are executed on the Project Attachment

Printed name and title are identified on the Project Attachment

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