



UNIVERSITY OF MINNESOTA

OWNER'S REPRESENTATIVE AGREEMENT

THIS OWNER'S REPRESENTATIVE AGREEMENT ("Agreement") is entered into on _____, 20____ (the "Effective Date") by and between Regents of the University of Minnesota, a Minnesota constitutional corporation, through its Department of Capital Planning and Project Management ("Owner"), and _____, a _____ ("Owner's Representative").

BACKGROUND

- A. The Owner intends to develop the project described in Exhibit A (the "Project").
- B. The Owner desires the services of the Owner's Representative, which has special expertise and experience in development involving areas relevant to the Project.
- C. The Owner desires to retain the Owner's Representative to provide comprehensive services in the organization, coordination, management and administration required for all aspects of the development of the Project, including, without limitation, planning, programming, site investigation, design, construction administration, and Project closeout.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the Owner and the Owner's Representative agree as follows:

AGREEMENT

1. Term of Agreement. This Agreement is effective on the Effective Date and shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled (the "Term"). Owner's Representative shall have a continuing obligation, after the Term, to comply with any provision of this Agreement intended for Owner's protection or benefit, or that that by its sense and context, is intended to survive the completion, expiration or termination of this Agreement. OWNER'S REPRESENTATIVE UNDERSTANDS THAT NO WORK SHOULD BEGIN UNDER THIS AGREEMENT UNTIL ALL REQUIRED SIGNATURES ON THIS AGREEMENT HAVE BEEN OBTAINED. ANY WORK PERFORMED BY OWNER'S REPRESENTATIVE PRIOR TO SUCH TIME SHALL BE CONSIDERED AS HAVING BEEN PERFORMED AT OWNER'S REPRESENTATIVE'S OWN RISK AND AS A VOLUNTEER.

2. Scope of Services.

2.1. Owner retains the Owner's Representative to provide sufficient organization, personnel and management to perform the services specified in this Agreement (the "Work") in an expeditious and economical manner at the highest standards of Owner's Representative's profession or business to further the Owner's interests. The Owner's Representative shall furnish all labor,

services, supplies, materials and equipment required to complete the Work using Owner's Representative's best efforts, skill, judgment, and abilities in accordance with this Agreement. The Owner's Representative accepts the fiduciary relationship of trust and confidence established between it and the Owner by this Agreement.

2.2. Owner's Representative shall provide a project team at all times that shall have sufficient capacity, skill and experience to perform the Work ("Owner's Representative's Team"). Owner's Representative may not, without the written consent of Owner, reassign or replace any member of the Owner's Representative Team. If a member of Owner's Representative's Team resigns, any replacement shall be subject to Owner's approval. The initial Owner's Representative Team identified in Exhibit 2.2 is approved by Owner.

2.3. Owner's Representative shall perform the Work in compliance with all applicable federal, state and local laws, regulations, and codes, including without limitation the provisions of the Gramm-Leach-Bliley Act, Owner's policies available at <http://www.policy.umn.edu/>, the A201-2007 as modified by Owner available at <http://www.cppm.umn.edu/proposals.html>, Owner's current Master Plan available at http://www.cppm.umn.edu/master_planning.html, and Owner's Construction Standards available at <http://www.cppm.umn.edu/standards.html>, and Owner's other applicable standards as provided by Owner ("Laws"). Owner's Representative shall maintain and shall require that its subcontractors, if any, maintain any and all required governmental licenses, certificates, approvals, and permits that are required of the Owner's Representative for the performance of the Work. The Owner's Representative agrees to maintain in full force and effect such required licenses, certificates, approvals, and permits throughout the Term.

2.4. Owner's Representative has or will perform the Work set forth in Exhibit 2.4 in cooperation with the Owner and the "Project Team". The Project Team includes the "Architect", which means (as appropriate to the context) the design architect, the architect or engineer who prepares the plans and specifications, the inspecting architect, or such other design and design-related consultants as may be appropriate; the "Contractor", which means the general contractor with whom the Owner has contracted to construct the entire or a portion of the Project and the general contractor's subcontractors, suppliers, and materialmen; and "Consultants", which means such other consultants and professionals that perform consulting services for the Project, including without limitation, testing laboratories and surveyors. Nothing contained in this Agreement shall create any obligation or contractual relationship between the Owner's Representative and any third party, including without limitation any other member of the Project Team.

2.5. Owner may modify the Work without invalidating this Agreement. To avoid delay in the Project, upon receipt of an Owner-requested change in the Work, the Owner's Representative shall promptly proceed with the change in Work. If the Owner's Representative believes it is entitled to additional compensation for the change in Work, the Owner's Representative shall promptly notify the Owner in writing. Any change in Owner's Representative's compensation shall be made by a written agreement signed by both parties.

3. Owner's Responsibilities.

3.1. The Owner shall provide information regarding its design and construction requirements for the Project to the Owner's Representative, in a timely fashion.

3.2. The Owner shall designate an individual who shall have the authority to render decisions on Owner's behalf ("Owner's Contact"). The Owner may change Owner's Contact from time to time by written notice to the Owner's Representative. The initial Owner's Contact shall be

4. Compensation and Terms of Payment.

4.1. The consideration for all Work performed or supplied by Owner's Representative under this Agreement shall be paid by Owner as set forth in Exhibit 4.1.

4.2. Subcontractor's Payment. If Owner's Representative engages any subcontractors to perform any of the Work, Owner's Representative shall not markup work performed by its subcontractors. Owner's Representative shall pay any such subcontractor within ten days (or such shorter period as required by law) of the Owner's Representative's receipt of payment from the Owner for undisputed services provided by the subcontractor. Owner's Representative shall pay interest of 1.5% per month (or any part of a month) to the subcontractor on an undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Owner's Representative shall pay the actual penalty due to the consultant. See Minnesota Statutes, Section 137.36.

4.3. Reimbursable Expenses.

4.3.1 Reimbursable expenses include the following ordinary, necessary, and reasonable expenses incurred by the Owner's Representative and its subcontractors related to the Work:

- Owner-authorized out-of-town travel and subsistence cost (if travel time is not also billed as professional services time) payable in accordance with the travel reimbursement policies applicable to employees of the Owner, as posted at <http://www.policy.umn.edu/groups/ppd/documents/policy/travel.cfm>;
- Long-distance telephone services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- Owner-requested printing, reproductions, plots and standard form documents;
- Postage, handling and delivery of Instruments of Service as requested by the Owner;
- Renderings, models, mockups, professional photography and presentation materials (i.e., computer studies, videos or cds) requested by the Owner; and

4.3.2. All reimbursement expenses shall be at the actual expense incurred by the Owner's Representative and its subcontractors without markup.

4.3.3. If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts.

4.3.4. Reimbursable expenses shall not without Owner's prior written consent exceed and /100 Dollars (\$)) during the Term.

4.4. Frequency of Invoicing and Terms of Payment. Owner's Representative shall submit invoices monthly, describing in reasonable detail the services (and goods, if any) provided in the preceding month. Payment shall be made by Owner within 30 days after Owner's receipt of an invoice and acceptance of services rendered under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Owner may withhold payment to the Owner's Representative hereunder if and for so long as the Owner finds any of the Owner's Representative's services to be defective, untimely, unsatisfactory or Owner's Representative otherwise fails to perform any of its obligations or otherwise is in default; provided, however, that any such holdback shall be limited to an amount sufficient in Owner's reasonable opinion to cure any such default or failure of performance by Owner's Representative.

4.5. Final Payment. Final payment shall not be due to Owner's Representative until Owner's Representative submits to Owner the following in such form as may be required by Owner: (a) a statement identifying all subcontractors who have performed all or a portion of the Work, whether the subcontractors have been paid for their services, and if not, what the unpaid amount owed or allegedly owed to each subcontractor; and (b) data or other documentation establishing payment or satisfaction of Owner's Representative's obligations arising out of this Agreement, such as receipts or releases and waivers of liens, claims, security interests or encumbrances. If a subcontractor refuses to furnish a release or waiver required by the Owner, Owner's Representative may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after final payment is made, Owner's Representative shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Owner's Representative warrants that upon submittal of an invoice, to the best of Owner's Representative's knowledge, information and belief, all work included in the Work shall be free and clear of liens, claims, security interests or encumbrances in favor of the Owner's Representative, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

5. General Terms and Conditions.

5.1. Termination, Suspension.

5.1.1. Termination for Convenience by Owner. Owner may terminate this Agreement in whole or in part upon written notice to Owner's Representative for Owner's convenience. In the event of a termination for Owner's convenience, Owner's Representative shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for services satisfactorily performed prior to termination, together with reimbursable expenses then due. In no event shall Owner's Representative be paid for work

performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which could have been avoided. Owner will not pay the Owner's Representative for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, placing orders, or entering into contracts for supplies, assistance, facilities, and materials, cause its suppliers and/or subcontractors to cease their work for this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.2. Termination for Cause. Either party may terminate this Agreement upon not less than 30 days' written notice to the other party should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination; provided, however, if in the reasonable determination of the non-defaulting party the event(s) giving rise to the termination is/are reasonably susceptible to cure, the termination shall not be effective if the defaulting party cures the basis of the termination within the 30 day period to the non-defaulting party's reasonable satisfaction. When the Owner terminates this Agreement for cause, Owner's Representative shall not be entitled to receive further payment until the Work is finished. Owner's Representative shall be entitled to payment, calculated on a pro rata or other equitable basis, determined by Owner in its sole discretion, for work or services satisfactorily performed minus all damages incurred by Owner connected with Owner's Representative's failure to perform. In no event shall Owner's Representative be paid for Work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which could have been avoided. Owner will not pay the Owner's Representative for loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination. Upon receipt of notice of termination, unless the notice directs otherwise, the Owner's Representative shall do the following: discontinue all Work, placing orders, or entering into contracts for supplies, assistance, facilities, and materials, cause its suppliers and/or subcontractors to cease their work for this Agreement, and shall promptly cancel all existing orders and contracts that are chargeable to this Agreement; and furnish the Owner with copies of all Project materials within seven (7) days of receipt of notice of termination.

5.1.3. Suspension by Owner. Owner may, without cause, order the Owner's Representative in writing to suspend its services in whole or in part for such period of time as the Owner may determine. If the Owner suspends the Project, without cause, for more than 30 consecutive days, the Owner's Representative shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Owner's Representative shall be compensated for reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services. If appropriate, the Owner's Representative's fees for the remaining services and the time schedules shall be equitably adjusted. If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Owner's Representative, the Owner's Representative may terminate this Agreement by giving not less than 30 days' written notice.

5.1.4. Suspension by Owner's Representative. If the Owner fails to make payments to Owner's Representative in accordance with this Agreement, such failure shall be considered

substantial nonperformance and cause for termination or, at Owner's Representative's option, cause for suspension of performance of services under this Agreement. If the Owner's Representative elects to suspend services, Owner's Representative shall give 30 days' written notice to the Owner due to the Owner's failure to make payment before suspending services. If Owner's Representative suspends services, Owner's Representative shall have no liability to Owner to the extent of any delay or damage caused the Owner because of such suspension of services, except to the extent the Owner withheld payment for causes permitted by this Agreement, or the suspension by Owner's Representative was otherwise not warranted. Before resuming services, Owner's Representative shall be paid all sums due prior to suspension and any reasonable expenses incurred as a direct result of the interruption and resumption of the Owner's Representative's services (if such suspension was warranted) and if appropriate, the Owner's Representative's compensation for the remaining services shall be equitably adjusted.

5.2. Disputes.

5.2.1. Owner and Owner's Representative shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the time period specified by applicable law.

5.2.2. Owner and Owner's Representative shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith.

5.2.3. If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation.

5.2.4. Owner and Owner's Representative shall endeavor to resolve Disputes between them by mediation which, unless the parties mutually agree otherwise, shall be conducted in accordance with the American Arbitration Association Construction Industry Mediation Procedures in effect on the Effective Date. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

5.2.5. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Hennepin County, Minnesota. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.2.6. If the parties do not resolve a Dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be litigation.

5.2.7. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Owner's Representative, in whole or in part.

5.3. Choice of Law, Forum Selection, Entire Agreement, and Amendment. This Agreement shall be construed under Minnesota law (without regard for choice of law considerations) and the policies and procedures of Owner, as amended from time to time. Any action arising out of this Agreement shall be heard by a state court in Minnesota. For this purpose, Owner's Representative specifically consents to jurisdiction in Minnesota. This Agreement constitutes the entire agreement and understanding of the parties and replaces any prior or contemporaneous agreement, whether written or oral. Owner shall not be bound by any amendment to this Agreement unless such amendment has been signed by Owner.

5.4. Insurance.

5.4.1. Owner shall maintain insurance required of it in the AIA A201-2007, as modified by Owner. Owner's Representative shall be named as an additional insured on Owner's liability insurance policy maintained with respect to the Project. Each policy shall be endorsed to provide Owner's Representative with at least 30 days advance written notice of non-renewal, reduction in coverage or cancellation. Upon request, Owner shall provide Owner's Representative certificates of insurance outlining evidence of Owner's insurance and the terms thereof.

5.4.2. Owner's Representative, at its sole cost and expense, shall maintain insurance coverage in the types and amounts listed below. The Owner's Representative shall also require its subcontractors to maintain the same insurance. All insurance shall be with insurers having an A.M. Best rating of A-VII or better and licensed to do business in the State of Minnesota:

.1 General Liability (including contractual liability)

- \$2,000,000 General Aggregate (per project)
- \$1,000,000 Products/Completed Operations
- \$1,000,000 Each Occurrence
- \$1,000,000 Personal/Advertising Injury (any one person or organization)
- \$ 50,000 Fire Damage (any one fire)
- \$ 5,000 Medical Payments (any one person or occurrence)

.2 Automobile Liability

- \$1,000,000 Bodily Injury/Property Damage combined single limit
- Statutory Personal Injury Protection

.3 Workers' Compensation

- Statutory coverage limits for Minnesota and All States Endorsement

.4 Employer's Liability

- \$100,000 Each Accident
- \$500,000 Disease – Policy limit
- \$100,000 Disease – Each Employee

.5 Professional Liability

\$1,000,000 per claim and \$2,000,000 aggregate on a project-specific basis

- .6 Umbrella Liability.** The Owner's Representative may use an umbrella or excess policy to supplement or provide any of the policy limits listed above. The umbrella or excess policy shall be follow-form of the required coverage or provide, at a minimum, the coverage available on the required policies.

Owner's Representative shall deliver to the Owner certificates, or at the request of the Owner certified copies, of the policies evidencing the insurance required above before the commencement of the Work and from time to time at the request of the Owner for as long as the Owner's Representative is required to maintain such insurance. Each policy shall (1) require the insurer to notify the Owner at least 30 days before any cancellation, nonrenewal or material modification of the policy, and (2) waive all rights of subrogation against the Owner. Upon Owner's receipt of any notice of cancellation, nonrenewal or material modification of a policy, the Owner's Representative and subcontractors shall, within ten (10) days thereafter, procure other policies of insurance that are acceptable to the Owner and similar in all respects to the policy or policies about to be canceled or altered. Each policy, except professional liability and worker's compensation Schedule A, shall name the Owner as an additional insured, with such coverage being primary and non-contributory with respect to any insurance carried by the Owner (including any self-insurance by the Owner).

5.4.3. The professional liability insurance may be written on a claims-made basis with a retroactive date of no later than the date that Owner's Representative first performed the Work.

5.4.4. Owner shall cause Contractors to maintain insurance as required in the AIA A201-2007 as modified by Owner. To the extent feasible, if Owner is named as an insured on any such party's liability insurance policy, Owner's Representative shall also be named as an additional insured.

5.4.5. If Owner, with the advice of Owner's Representative, determines it is appropriate to establish an Owner Controlled Insurance Plan ("OCIP") for the Project, Owner's Representative shall assist Owner in establishing the OCIP and participate in the OCIP.

5.5. Indemnification.

5.5.1. To the fullest extent allowed by law, Owner's Representative agrees to release, defend (with counsel reasonably acceptable to Owner), indemnify, and hold harmless Owner from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of negligent acts and/or errors and/or omissions of Owner's Representative or its subcontractors in the performance of the Work.

5.5.2. Each agreement between Owner's Representative and its subcontractors shall

include provisions requiring Owner's Representative's subcontractors, to the fullest extent allowed by law, to indemnify, defend (with counsel reasonably acceptable to Owner), and hold harmless Owner and the Owner's Representative from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, which arise in connection with, in relation to, or as a result of negligent acts and/or errors and/or omissions of Owner's Representative's subcontractor's performance of the Work.

5.6. Audit and Retention of Books and Records.

5.6.1. Owner's Representative shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the Owner.

5.6.2. Owner and/or its accountants, auditors, and agents shall, upon reasonable prior notice and during customary business hours, be entitled to audit, inspect, examine, and reproduce ("Audit") all of the Owner's Representative's information, materials, records or data relating to this Project, including but not limited to, accounting records, written policies and procedures, subcontract files (including subcontracts, bids 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 this Agreement. In those situations where the Owner's Representative's Records have been generated from computerized data, Owner's Representative agrees to provide the Owner with extracts of data files in computer readable format on disks or suitable alternative computer exchange formats.

5.6.3. Owner's Representative 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 Dispute is asserted during said 12-year period, the Owner's Representative shall retain all such Records until the Dispute has been resolved.

5.6.4. Owner's Representative shall require all payees to comply with the provisions of this Article by insertion of the requirements hereof in a written agreement between the Owner's Representative and the payee.

5.6.5. 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 Owner and its accountants, auditors and agents agree to perform all of their work in that space and not elsewhere in the Owner's Representative's offices, to not interact with the Owner's Representative's employees, and to not otherwise unreasonably interfere or disrupt the work of the Owner's Representative's employees.

5.6.6. If an Audit discloses overpricing or overcharges (of any nature) by the Owner's Representative to the Owner in excess of 1% 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 Owner's Representative. Any adjustments and/or payments 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 Owner's Representative.

5.7. Data, Information.

5.7.1. Owner's Representative shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, with regard to any information the Owner provides to the Owner's Representative that is subject to the Minnesota Government Data Practices Act.

5.7.2. Owner's Representative acknowledges and agrees that any Confidential Information disclosed to it, its subcontractors or other representatives pursuant to this Agreement shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, and shall remain the Owner's property. The term "Confidential Information" means all Owner knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by the Architect and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that Owner's Representative can show (by contemporaneous written records) that Owner's Representative had it in its possession before beginning the Project and before disclosure by Owner. Owner's Representative agrees that the Confidential Information constitutes valuable trade secrets of the Owner and that money damages cannot fully remedy any breach of this Section. Owner's Representative agrees that the Owner may obtain an injunction to prevent or enjoin any breach of the obligations of this Section. Owner's Representative 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.

5.7.3. Within fifteen (15) days of the completion or earlier termination of this Agreement, or upon earlier request of Owner, Owner's Representative shall return all documents, data and other information provided by Owner to Owner's Representative, or Owner's Representative's employees or agents in connection with this Agreement. Additionally, Owner's Representative, upon the request of Owner, shall destroy all copies of such Owner provided data, documents, or information in Owner's Representative's possession or control, and provide Owner with proof of such destruction.

5.8. Ownership of Works, Intellectual Property Rights.

5.8.1. The term "Works" includes creative writings, research data and reports, writings, sound recordings, pictorial reproductions, drawings, film and video recordings, and other graphical representations, software, business methods, inventions, improvements, and

discoveries, and works of any similar nature (whether or not eligible for copyright, trademark, patent or other proprietary rights), which are to be prepared for Owner and delivered under this Agreement. Ownership of the Works and all copyrights, trademarks, patents and other proprietary rights in the Works shall be owned exclusively by Owner. Owner's Representative agrees that all copyrightable Works shall be considered a "work made for hire" and that Owner is the author of and owns all rights in and to the Works, and agrees that if the Works may not be considered a work made for hire under 17 U.S.C., Sections 101 and 201(b), Owner's Representative shall without further compensation, assign all rights Owner's Representative may have in the Works to Owner. Owner's Representative waives any and all statutory moral rights in the Works which Owner's Representative may have arising under 17 U.S.C. 1006(a), as well as any rights arising under any other federal, state, or foreign law that conveys any other type of moral right. Owner's Representative shall, without further compensation, disclose information to Owner and execute such documents as may be reasonably necessary to assist Owner in securing and enforcing rights in the Works and related proprietary rights.

5.8.2. Owner shall be the owner of and have all common law, statutory, and other reserved rights in all 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, including, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials (the "Instruments of Service"). Owner's Representative shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights. Owner's Representative is authorized to use and reproduce the Instruments of Service provided to it 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. Owner's Representative may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the work without the specific written consent of the Owner, which the Owner may withhold in its sole discretion.

5.9. Warranty. Owner's Representative expressly represents, warrants and guarantees that (a) it (i) shall comply with all applicable Laws; and (ii) is not currently debarred or suspended by any federal agency from doing business with the federal government, and Owner's Representative shall notify Owner if it becomes debarred or suspended during the Term; and (b) all services and goods (if any) provided under this Agreement: (i) are fit for the particular needs and purposes of Owner as may be communicated to Owner's Representative; (ii) comply with the highest warranties and representations expressed by Owner's Representative orally or in any written advertisement, correspondence, or other document provided to or in the possession of Owner; (iii) comply with all applicable Laws; (iv) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Owner's Representative agrees to correct all defects and nonconformities at Owner's Representative's sole expense, to be liable for all direct damages suffered by Owner and to defend, indemnify, and hold harmless Owner from any claim asserted by any person resulting in whole or in part from such breach. The foregoing warranties and guarantees shall not be deemed waived by reason of the acceptance of the goods or services or payment by Owner.

5.10. Conflict of Interest. Owner's Representative affirms that, to the best of its knowledge, no actual or potential conflict exists between Owner's Representative's family, business or financial interests and its services under this Agreement, and that it shall raise with Owner any questions regarding possible conflict of interest that may arise. Owner's Representative further affirms that it shall not hire any officer or employee of Owner to perform any service covered by this Agreement. If the Work is to be performed in connection with a federal contract or grant, Owner's Representative shall not hire any employee of the United States Government to perform any service set forth herein.

5.11. Taxes.

5.11.1 Owner is exempt from paying Minnesota sales and use taxes on certain purchases as provided in Minnesota Statute, Section 297A.70 Subd 2(a)—Owner's Representative shall not charge Owner for such sales and use taxes.

5.11.2 Owner may be obligated by state and federal law to withhold state and federal taxes from the consideration stated in Section 4. These taxes may consist of, but are not limited to, the Minnesota state entertainer tax, Minnesota state nonresident withholding tax, federal withholding on payments to foreign nonresident aliens, and federal backup withholding.

5.11.3 Upon execution of this Agreement, Owner's Representative will provide to Owner a signed W-9.

5.12. Use of Owner Name or Logo. Owner's Representative agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with Owner or the name of any representative of Owner in any sales promotion work or advertising, or any form of publicity, without University's written permission in each instance.

5.13. Independent Contractor. OWNER'S REPRESENTATIVE SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OF OWNER. NEITHER OWNER'S REPRESENTATIVE NOR ANY AGENT OR EMPLOYEE OF OWNER'S REPRESENTATIVE SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF OWNER. OWNER'S REPRESENTATIVE SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. OWNER'S REPRESENTATIVE ACKNOWLEDGES THAT OWNER'S REPRESENTATIVE AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. OWNER'S REPRESENTATIVE SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND OWNER TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. OWNER'S REPRESENTATIVE SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF OWNER'S REPRESENTATIVE, ITS EMPLOYEES, AND AGENTS.

5.14. Anti-Kickback Enforcement Act of 1986. This Agreement is subject to the provision of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). Owner's Representative certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute, Section 15.43. Owner's Representative agrees that its participation with any employee of the Owner in acts that violate Minnesota Statutes, Section 15.43 constitutes a material default under this Agreement entitling the Owner to terminate for cause.

5.15. Affirmative Action, Equal Employment Opportunity. Owner is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Owner's Representative must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Owner's Representative will maintain non-segregated facilities for their employees and not allow their employees to perform services at any segregated facilities under its control. Owner's Representative shall also develop and have on file for each of its establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. Additionally, this Agreement is subject to the requirements of and Owner's Representative agrees to comply with (i) Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor (41 CFR Chapter 60) in promoting Equal Employment Opportunities; (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans; (iii) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-47 1) in promoting affirmative action in Employment of the Handicapped; (iv) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged shall have maximum practicable opportunity to participate in Owner's bidding process; and (v) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. If applicable, Owner's Representative certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Agreement, Owner's Representative certifies that it complies with all applicable federal and state laws as well as Owner policies related to non-discrimination, equal employment opportunity, and affirmative action.

5.16. Targeted Business, Urban Community Economic Development, and Small Business Program. Owner's Representative acknowledges that the Owner has a policy to establish and implement its Targeted Business, Urban Community Economic Development, and Small Business Program (the "TBE Programs"). A copy of this policy is available at <http://wwwl.umn.edu/regents/policies/administrative/TargetedBusiness.html>. Owner's Representative acknowledges that it has a copy of this policy. As a material consideration for the Owner entering into this Agreement, Owner's Representative agrees to satisfy this policy and to

5.18. Fund Availability; Federal Funds. Financial obligations of Owner payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Agreement is funded in whole or in part with federal funds, Owner's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes hereof, the federal requirements set forth in Exhibit 5.20 shall be incorporated into this Agreement, and Owner's Representative shall adhere to such additional requirements. If federal contract funds are not being used, Owner's Representative will not receive Exhibit 5.20.

5.19. Non-Waiver. No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

5.20. Assignment. Owner's Representative may not assign any obligations of this Agreement without the prior written consent of Owner. In the event of any assignment, Owner's Representative shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Owner's Representative, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void. Notwithstanding any notice of assignment, Owner's tender of payment to Owner's Representative named herein, or to any person reasonably believed by Owner to be entitled to payment, shall satisfy Owner's obligation to pay, and in no event shall Owner be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

5.21. Severability. If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.

5.22. Survivability. The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder—including, without limitation, Sections 5.2, 5.3, 5.5-5.9, and 5.12—shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.

5.23. Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party.

This Agreement is entered into as of the Effective Date.

OWNER

Regents of the University of Minnesota

(Signature)

(Printed name and title)

Date: _____

OWNER'S REPRESENTATIVE

(Signature)

(Printed name and title)

Date: _____

EXHIBIT A
PROJECT DESCRIPTION

EXHIBIT 2.2

OWNER'S REPRESENTATIVE'S TEAM

EXHIBIT 2.4

SCOPE OF SERVICES

Owner's Representative shall provide the following scope of services ("Work"):

1. GENERAL SERVICES

1.1. Owner's Representative, in general, shall have primary management responsibility for the Project and shall coordinate all Project matters.

1.2 Using the Owner's electronic Project Management Information System, Owner's Representative shall maintain an organized filing system for all Project documents and records. At Project completion, Owner's Representative shall certify that all Project documents and records are uploaded into the Owner's electronic Project Management Information System. If it is technically not possible to upload a Project document or record into the Owner's electronic Project Management Information System, the Owner's Representative will deliver the document(s) and record(s) to the Owner at the end of the Term or at any time during the Term at the Owner's request.

1.3. Owner's Representative shall schedule, attend, conduct, record, and assist the Owner at all Project meetings (including without limitation meetings with the Architect, Contractor, Consultants, or Owner's Board of Regents). Owner's Representative shall direct the Architect or Contractor to prepare meeting minutes if the Architect or Contractor is contractually required to do so. In the absence of meeting minutes prepared by others, Owner's Representative will provide Owner with minutes from such meetings prepared by Owner's Representative. Owner's Representative shall review for accuracy the minutes of such meetings prepared by either the Architect, Contractor, or others. Owner's Representative shall clarify, amend and report any discrepancies affecting the Project.

1.4. Owner's Representative shall furnish to the Owner weekly reports containing (a) the status of the Project; (b) a comparison of the Project budget to costs incurred through the date of the report; (c) a comparison of the Project schedule to the work actually completed through the date of the report; (d) any revision to the Project schedule or Project budget made during the week covered by the report; (e) a summary of change orders made during the week covered by the report; (f) a list of all pending change orders and all outstanding issues requiring action or approval by Owner; (g) the status of any governmental requirements and activities required to facilitate approval of the Project; and (h) any other reports concerning the Project as Owner may reasonably request.

1.5. Using Owner's electronic Project Management Information System, Owner's Representative shall provide accounting services for the Project, including but not limited to (a) preparing annual budgets; (b) preparing monthly variance reports; (c) monthly Project accounting services related to assembling, reviewing and forwarding to Owner for payment the invoices from the Architect and Contractor and other consultants; and (d) processing and coordinating the payment of the Contractors' applications for payment. Owner's Representative

shall provide such reports in an electronic format in a form acceptable to Owner.

1.6. Owner's Representative shall be available for questions and follow up by telephone or site meetings with Owner.

2. PRE-DEVELOPMENT PHASE SERVICES

2.1. Owner's Representative shall review information relevant to the Project, including predesign studies, preliminary site plans, current building program/utilization, Owner research, Owner generated project concepts, proposed building program, environmental investigation and remediation reports, building systems analysis reports, applicable city/state regulations including health code, and Americans with Disabilities Act compliance.

2.2. Owner's Representative shall become familiar with, and provide services that are consistent with all applicable Laws and the requirements of easements, licenses, and other pertinent agreements to the extent the foregoing are made known to Owner's Representative.

2.3. Owner's Representative shall meet with the Owner and its risk management/insurance consultants to discuss, and make recommendations regarding, the development and implementation of an effective risk management program for the Project.

2.4. Owner's Representative shall assist Owner in the compliance with the Owner's standard contracting protocol, including any women or minority enterprise program applicable to the Project, and similar applicable federal requirements, if any;

2.5. Owner's Representative shall consult with and advise Owner concerning appropriate construction delivery methods, including advantages and disadvantages of design-bid-build, construction management, separate prime contractors, sequenced bid packages, fast-track and design-build for some or all components of the Project.

2.6. Owner's Representative shall assist the Owner with and lead (subject to Owner's input and final approval) the process of identifying, soliciting proposals from, selecting, and negotiating contracts with the Project Team for the completion of the Project. Owner's Representative shall advise Owner and make recommendations concerning (a) scope of services to be provided by the Project Team; (b) fees; and (c) administration of contracts with the Project Team at Owner's direction.

2.7. Owner's Representative shall provide leadership to the Project Team on all matters relating to the planning, design, governmental approvals, construction, and other activities necessary to complete the Project. Owner shall select, hire and pay the Project Team with the consultation and advice of the Owner's Representative.

2.8. Owner's Representative shall (1) coordinate the preparation by the Architect of a written and graphic description of the program for the Project, including room uses, sizes and adjacency requirements, in accordance with Owner's goals and objectives (the "Project Program"), (2) prepare and submit to Owner a preliminary estimated schedule for completion of the design and

construction of the Project, including, without limitation, the various major activities to be undertaken in connection with the Project and the approximate timing of the commencement and completion of such activities, which Owner's Representative shall monitor and revise from time to time throughout the Term (the "Project Schedule"); (3) assist Owner in establishing a Project budget based on a preliminary estimate of Project costs, including without limitation Owner's internal costs, which Owner's Representative shall update from time to time with increased detail as the design of the Project progresses (the "Project Budget"); and (4) manage the Project Schedule and Project Budget to manage cash flow, maximize value, keep the work progressing in a logical manner, and avoid or mitigate interruptions of design and construction.

2.9. Owner's Representative shall consult with the Owner regarding the Owner's requirements and responsibilities relating to and coordinate all predevelopment site evaluation activities, including but not limited to site identification with the Owner and other relevant government agencies; obtaining and evaluating any necessary soil reports and studies and determining the need for any site soil corrections; obtaining and evaluating a site plan(s), survey, topographical survey, schematic designs and elevations for the Project; and determining the need for any property rights or other actions related to underground utilities, access, encroachments or other development limitations disclosed in the survey. Owner's Representative shall advise and assist the Owner in all activities necessary to obtain any and all property or rights-of-way necessary for development of the Project or the provision of adequate utility services and access thereto.

2.10. Owner's Representative shall coordinate any required environmental review of the Project, and advise and assist Owner in obtaining all environmental permits or approvals required for the Project, if any.

2.11. Taking into consideration the Owner is not subject to local building permit requirements and local building code enforcement, Owner's Representative shall coordinate with Owner in identifying any governmental and quasi-governmental authorities having jurisdiction over the Project, as well as any other organizations that may have an interest in the Project; assist the Architect in obtaining permits for the Project; coordinate with the various municipal and other governmental agencies having permit responsibilities for the Project; represent the Owner at meetings of the applicable governmental units; recommend to the Owner appropriate policies or decisions to be followed on public matters affecting the Project; direct the Architect to ascertain whether there are any significant building code or other governmental compliance issues; coordinate with the Contractor the obtaining of necessary building permits or other necessary construction approvals for the Project; and advise the Owner as to any material issues noted by the Architect.

2.12. Owner's Representative shall schedule and attend regular meetings with the Architect related to the development of the design.

2.13. Owner's Representative shall coordinate with the Contractor and provide recommendations to the Owner and Architect regarding construction feasibility, value engineering, availability of materials and labor, time requirements for installation and construction, and factors relating to costs, including costs of alternative designs or materials in a manner consistent with the Project Program, Budget and Schedule, and possible cost reductions and economies if and when necessary to reconcile the Project Budget, Program, and Schedule.

2.14. Owner's Representative shall review and comment on the drawings and specifications for the Project (the "Construction Documents"), as they are prepared by the Architect, and coordinate their review by the Contractor. Owner's Representative shall assist the Owner in the evaluation and recommendation of appropriate design alternatives in light of the Owner's Project Program and the Project Budget and Schedule, provided the Owner's Representative shall not assume any of the Architect's responsibilities for design or any of the Owner's Representative's responsibilities for construction means, methods or costs.

2.15. Upon approval by Owner of design development plans and specifications, Owner's Representative shall (a) lead the process on behalf of the Owner in reviewing and coordinating the preparation by the Architect and other Project consultants of the Construction Documents for the Project; and (b) make recommendations regarding alternative solutions whenever design details appear to (i) adversely affect construction feasibility, the Project Program, Budget or Schedule; or (ii) cause the Project to deviate from the approved drawings or requirements of Owner.

2.16. If directed by Owner, Owner's Representative shall direct the Architect, Contractor(s), and Consultant(s) to utilize the Owner's internet-based project management software, which software may include, but not be limited to, the processing of plan reviews, purchase orders, change orders, invoices, payment applications, requests for information, and document management related to the Project. If the Owner chooses to utilize its project management software for the Project, the Owner will provide and manage a login license for Owner's Representative without charge. Owner will provide initial software training to Owner's Representative without charge. Except for licenses and initial training, the Owner assumes no responsibility for any real or potential costs associated with the use of the project management software by the Owner's Representative.

2.17. Owner's Representative shall (i) prepare and update cost estimates for the estimated Project costs to be incurred by Owner in designing and constructing the Project, including the projected monthly expenditures for the Term (the "Project Costs Estimate"). The Project Costs Estimate shall include separate line items for each cost category included in the Project cost, with line items for anticipated contracts and subcontracts, and (ii) evaluate pricing for alternative building and engineering systems. In addition, Owner's Representative shall:

2.17.1. Revise such Project Costs Estimate from time to time as the design of the Project is finalized, the working drawings are prepared, construction contracts for the Project are negotiated, awarded and executed and shall provide a variance summary with each update, including recommendations on any necessary corrective action for unfavorable variances from the then-current Project Budget.

2.17.2. If appropriate, identify contractors and subcontractors to provide additional cost estimate confirmation or means and methods suggestions.

2.17.3. In consultation with the Architect and Contractor, Owner's Representative shall provide value engineering services to analyze and make recommendations concerning availability of materials and labor, time requirements for installation and construction, and other

factors related to costs, including costs of alternative designs or materials, and possible cost reductions and economies. Owner's Representative shall provide value engineering recommendations to Owner, but the final decision will, in every instance, be Owner's decision.

2.17.4. Owner's Representative shall recommend modifications to the Project design, Project Budget, Project Schedule and Project Program to reconcile each with the others, for final decision by Owner;

2.17.5. Owner's Representative shall assist Owner in setting a final Project Budget, based on the approved design and the Project Schedule, the Project Program, the Project Costs Estimate and financial constraints identified by Owner; if Owner, with the advice of the Owner's Representative, elects to proceed with separate Project construction contracts or separate bid packages, the Project Costs Estimate and final Project Budget shall include a separate budget for each Project construction contract or bid package. When used in this Agreement, depending on its context, the term "bid" shall mean "proposal" and the term "bidder" shall mean "proposer".

2.18. Owner's Representative shall act as Owner's representative in coordinating and assisting the Architect in the preparation of bid documents, which shall consist of, among other things, the working drawings, proposed form of construction contracts and invitation and instructions to bidders or requests for proposals. Owner's Representative shall use Owner's standard procurement forms and manage the award of contracts in accordance with Owner's requirements.

2.19. Owner's Representative shall organize, on behalf of Owner, the division of the Project construction work into major trades for the bidding of the work. If any portions of the work are to be separated into separate bid sections, Owner's Representative shall review the working drawings and make recommendations to the Architect to (i) coordinate the work of the separate bid portions, (ii) allocate the work to the separate bid portions, (iii) attempt to minimize jurisdictional disputes, (iv) provide the proper coordination for phased construction, and (v) advise Owner with respect to whether major portions of the work should be bid as separate prime contracts.

2.20. If requested by Owner, Owner's Representative shall make recommendations for prequalification criteria for bidders, including any need for performance bonding of any bidder if selected as a contractor, and develop a bid list for prospective contractors and subcontractors.

2.21. If requested by Owner, Owner's Representative shall develop competitive bidding or proposal procedures and requirements.

2.22. Owner's Representative shall conduct prebid conferences to familiarize bidders with the bid documents and any special or unique systems, materials or methods.

2.23. Owner's Representative shall review bids, prepare analyses and make recommendations to Owner for award of a contract for the Project.

2.24. Owner's Representative shall provide recommendations regarding each

Contractor's proposed mobilization schedule, temporary Project facilities, equipment, materials and services during construction and the assignment of responsibilities relating to same.

2.25. Owner's Representative shall conduct pre-award conferences with each successful respondent for a Project construction contract, advise Owner regarding the negotiation of business terms of each Project construction contract, and advise Owner on the acceptability of Contractor for the Project.

2.26. Owner's Representative shall make recommendations as to the timely and economical purchases of materials and equipment; and monitor the purchase of such items.

2.27. Owner's Representative shall review and comment on all safety, health and environmental protection measures proposed by each Contractor, and make recommendations with respect to any changes thereto that Owner's Representative deems necessary or appropriate.

2.28. After Owner awards each Project construction contract and before the Contractor commences work on the site, Owner's Representative shall assist Owner in the preparation of all necessary site logistics plans, traffic flow diagrams and plans for the performance of the applicable work, showing the use of designated roadways or street lights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic; and assist in obtaining necessary government approvals required to implement such traffic plans.

3. DEVELOPMENT PHASE SERVICES

3.1. Owner's Representative shall represent the Owner in its communications with the Architect, Contractor, and Consultant(s); schedule, attend, and conduct progress meetings, regular on-site meetings to review construction progress and pay requests and to provide appropriate recommendations to the Owner concerning the Owner's decisions on construction matters, including, where necessary, alternative designs or materials; and coordinate, review, advise the Owner concerning, and approve change orders, submittals, and requests for information.

3.2. Owner's Representative shall (i) assist and review the processing of change orders, (ii) advise Owner concerning the necessity for, scope of and recommended cost of change orders, and (iii) negotiate, on Owner's behalf, all change orders with Contractor. The final Project Budget and/or Project Schedule, as applicable, will be revised to reflect approved change orders.

3.3. Owner's Representative shall review applications for payment by the Contractor, review and certify certificates for payment issued by Architect and make written recommendations to Owner concerning payment. Owner's Representative's certification for payment shall constitute a representation to the Owner that, to the best of the Owner's Representative's knowledge, information, and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the Contract Documents. The issuance of a certificate for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. In addition, Owner's Representative and Owner shall cooperate with one another to develop an orderly procedure for review and payment of Project costs and expenses, including fees for the Architect and Consultants.

3.4. Owner's Representative shall direct Contractor (and others, where appropriate) to prepare and update a critical path schedule for completion of the applicable work. In the event of delays impacting the critical path schedule, Owner's Representative shall make recommendations to Owner for corrective action by Contractor.

3.5. Owner's Representative shall coordinate negotiations among the Project Team, and as applicable, the utility companies, local municipalities, and others concerning the installation of electric, sewer, water, gas, and telephone (but not internal telephone, security or data wiring or connections) facilities required for the Project, on a schedule consistent with the Project Schedule.

3.6. Owner's Representative shall coordinate the Architect's review and approval of shop drawings, product data and other submittals by Contractor.

3.7. In conjunction with the Contractor who has prime contractual responsibility, the Owner's Representative shall additionally review and advise the Owner concerning the adequacy of the Contractor's personnel and equipment, and the availability of materials and supplies to meet the Contractor's schedules in relation to the Project Schedule.

3.8. Owner's Representative shall cause Contractor to maintain a daily log containing the number of workers, equipment, work accomplished, problems encountered and other relevant data as the Owner may require. Although Owner's Representative shall not guarantee the performance by Contractor, Owner's Representative shall recommend courses of action to the Owner when Owner or Owner's Representative becomes aware that requirements of any Project construction contract are not being fulfilled, or when Contractor falls behind in its schedule; shall communicate recommendations, as directed by the Owner, to Contractor on behalf of the Owner; shall monitor Contractor's performance of such recommendations; and shall report Contractor's progress to the Owner on at least a monthly basis.

3.9. Owner's Representative shall notify Owner if Owner's Representative becomes aware that the work of Contractor is not being performed in accordance with the requirements of the Contract Documents. As appropriate, Owner's Representative shall have authority, with written authorization from the Owner, to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is covered, installed or completed. Owner's Representative shall review any and all test reports and notify the Owner, the Architect and the Contractor, as appropriate, of deficiencies in the work of which Owner's Representative becomes aware and shall advise the Owner of projected consequences of such default shall make recommendations to Owner with respect thereto. With the written authorization of Owner, Owner's Representative shall reject work which does not conform to the requirements of the applicable Contract Documents.

3.10. Owner's Representative shall advise the Owner concerning the purchase of building materials by the Contractor.

3.11. Owner's Representative shall attend on-site review of the Project to confirm substantial and final completion of the construction of the Project, and notify Owner when Owner's

Representative believes the work under a Project construction contract is substantially complete and that a punch list should be prepared.

3.12. Owner's Representative shall coordinate with the Architect in its review of the work to enable the Architect to determine the date of substantial completion. At the substantial completion by Contractor of the work, monitor the Architect in its inspection of the work and preparation of a detailed "punch list" specifying any items which require completion, installation, correction or repair. Owner's Representative will consult with Owner and/or Architect in connection with recommendations for the rejection and replacement of all nonconforming work, as appropriate.

3.13. Owner's Representative shall obtain from Contractor record drawings or, if required by the applicable Project construction contract, "as-built" drawings, as construction progresses.

3.14. Together with the Architect and Owner, Owner's Representative shall monitor and observe the testing and start-up of all utilities, systems and equipment for the Project.

3.15. Owner's Representative shall complete the final close-out of the Project by (i) obtaining, or causing the Contractor to obtain, all government approvals required for the legal use and occupancy of the Project, (ii) obtaining all warranties, guarantees, bonds, insurance certificates, installation manuals, and other items required pursuant to the Project construction contracts, (iii) obtaining all affidavits, waivers, and releases the Contractors are required to provide pursuant to the Project construction contracts to achieve final completion of the Project, (iv) analyzing all claims (including change order disputes and other claims for extra compensation) asserted by the Contractors and the Architect, (v) collecting and/or otherwise resolving any and all backcharge claims that Owner may assert against any Architect or Contractors, including assistance with any legal proceedings instituted by Owner and/or any Architect or Contractor, and/or (vi) representing Owner at meetings and/or inspections scheduled by Owner and held to resolve problems relating to design, physical condition or operation of the Project to seek enforcement of warranties.

3.17. Owner's Representative shall coordinate the purchase and installation of Owner-Furnished-Owner-Installed and Owner-Furnished-Contractor-Installed furniture, fixtures and equipment.

3.16. Owner's Representative shall assist the Owner with the selection of the mover and coordinate all occupant relocations into the Project space.

3.17. Owner's Representative shall assist the Owner with the selection of the Commissioning agent and coordinate and administer the Project Commissioning process.

4. SECURITY/SAFETY. While performing the Work, the Owner's Representative shall promptly inform the Owner if the Owner's Representative becomes aware of any security concerns and/or unsafe conditions.

EXHIBIT 4.1

COMPENSATION

Subject to adjustment made by written change orders, Owner's total obligation to Owner's Representative under this Agreement shall be paid

Owner shall pay Owner's Representative for performance of the Work on an hourly basis as follows: . Provided, however, in no event shall Owner's total payment to Owner's Representative exceed \$ without the prior written approval of Owner, OR

Owner shall pay Owner's Representative for the Work a stipulated lump sum amount of \$; OR

Owner agrees to pay the Owner's Representative a fee (the "Owner's Representative's Fee") equal to % of the Cost of the Work (as defined in the A201-2007 as modified by the Owner), provided the Cost of the Work shall be capped at \$ for calculation of the Owner's Representative's Fee, payable as follows:

Schematic Design Phase		percent		%
Design Development Phase		percent		%
Construction Documents Phase		percent		%
Bidding or Negotiation Phase		percent		%
Construction Phase		percent		%
Total Compensation	one hundred	percent	100	%

EXHIBIT 5.20
FEDERAL REQUIREMENTS